

## CONFIDENTIAL EXECUTIVE ORDER 1096 INVESTIGATION REPORT

To: Ms. Jamie Pontius-Hogan, Director of Title IX and Clery Compliance  
California State University-Fresno (“CSUF” or “the University”)

cc: Daryl Hamm, Esq., University Counsel

From: Mary Lee Wegner

Date: April 7, 2020

Re: Confidential Report re Investigation of EO 1096 Complaint

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### I. Introduction and Scope of Inquiry

On or about November 8, 2019, CSUF engaged me to conduct an impartial investigation of a complaint by Complainant (“C”), a former CSUF employee, that Respondent (“R”), CSUF’s Vice President of Student Affairs and Enrollment Management (“Student Affairs”), engaged in inappropriate conduct in violation of California State University Executive Order 1096, the Systemwide Policy Prohibiting Discrimination, Harassment, Retaliation, Sexual Misconduct, Dating and Domestic Violence, and Stalking Against Employees and Third Parties (revised March 29, 2019) (“EO 1096”). C is a former CSUF [REDACTED] who worked closely with R in Student Affairs from approximately [REDACTED] through [REDACTED], the effective date of her resignation.

In late October 2019, C alerted her immediate supervisor (W1), the Human Resources Department (“HR”) and the Title IX Director (W16) that R had created a sexually hostile and otherwise abusive work environment for C and others.<sup>1</sup> On October 29, 2019, C submitted a written complaint that prompted this investigation. She reported that R had engaged in the following behavior, among other things: (a) making comments about her body and appearance; (b) touching her repeatedly after being asked not to do so; (c) staring at her and other women; and (d) making comments and engaging in other behavior with possible sexual or gender-based overtones. According to C, she resigned and “left a job that I loved and was good at” because of R’s alleged harassment. The focus of this inquiry and report is C’s allegation that R’s conduct violated EO 1096, specifically.

This report incorporates my thoughts and impressions about the information received. It does not reference every fact obtained or all incidents about which concerns were raised. For example, although I informed CSUF about information some witnesses volunteered regarding R’s alleged inappropriate behavior toward other women, those allegations are not the subject of

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<sup>1</sup> C also alleged that R had engaged in abusive or otherwise unprofessional workplace behavior, potentially in violation of the University’s workplace standards of professional conduct as outlined in California Education Code 89535. Those allegations are the subject of a separate report, although C and other witnesses interviewed in this investigation sometimes provided information relevant to both allegations. Evidence obtained about those allegations (such as instances in which R yelled at C or others) is not the subject of this report’s finding, although it may be mentioned if relevant to related allegations or the timeline of certain events.

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findings. That information is included only to the extent that it is consistent with C's complaint about similar behavior by R.

## **II. Summary of Findings**

This report summarizes findings of fact and conclusions regarding C's allegations and whether R's conduct violated the applicable policy. It does not express any opinion about whether R's behavior violated applicable state or federal law. The goal of this investigation was not to prove or disprove the allegations, but rather to gather information in a neutral fashion and to reach reasoned conclusions about information received. The fact findings were made by carefully analyzing the documentary and testimonial evidence provided to date.

The credibility of those interviewed was considered when making these findings. In evaluating an individual's credibility, many factors were considered, including possible bias or motivation to be dishonest, the ability of a witness to recall information, the specificity of the information provided, whether the information was consistent with prior statements made by the witness or information offered by other witnesses, and the plausibility of information provided.

The preponderance of evidence regarding C's allegations supports the finding that R engaged in inappropriate workplace behavior in violation of EO 1096. Such behavior included: (a) touching C on her shoulder, lower back and knee/thigh, putting his arm around her, grabbing and massaging her arm muscle and adjusting her bra strap, even after being advised C did not like to be touched; (b) staring at C's and other women's body parts; (c) commenting about C's appearance and clothing; (d) making inappropriate comments and telling stories with potential sexual overtones; and (e) attempting to meet with C behind closed doors and closed blinds, showing C pictures of R's sons and asking whether they are "hot" and if she would date them, and engaging in other behavior that reasonably and genuinely made C uncomfortable given the totality of the circumstances. As discussed in more detail below, although most witnesses did not experience such behavior from R themselves, some credibly and consistently reported observing, and in a few limited circumstances, experiencing the behavior C reported. Several others heard about the behavior from C or others, often around the time it happened. As a result, R's repeated denials that he engaged in any such conduct, and the endorsements he received from colleagues at CSUF and other universities about his positive workplace behavior, were outweighed by other credible evidence that R's behavior toward C was inappropriate. This finding and the underlying findings of fact are based on the information received to date, including witness interviews, witness notes, letters, reports and surveys and email communications.

## **III. Timeline and Investigation Process**

In early November 2019, I received and reviewed background information, including C's complaint, the investigation notices provided to C and R, EO 1096 (rev. March 29, 2019) (and later, its prior version), documents outlining CSUF procedures, complaint intake notes, and a Student Affairs organizational chart. The initial investigation timeline was extended on December 19, 2019, and again on February 28, 2020, as a result of interview scheduling delays

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and R's requests on February 25, 2020, and again on March 5, 2020, that additional witness interviews occur.

From November 12, 2019 through March 19, 2020, I interviewed C, R and 26 witnesses who interacted with C, R or both in various capacities. Some had significantly more interaction with R and with R and C, together, than others. The identities and titles (if any) of those interviewed are provided in the Witness Key accompanying this report. The dates on which interviews occurred, the mode of interview (i.e., in person, by phone or by video conference), and a summary of information individuals provided regarding the topics of this inquiry can be found in the CSUF Interview Summaries and Exhibits (the "Summaries") that also accompany this report. Most interviews occurred in person, although some took place by video conference or phone (depending on availability, location and witness preference). A few follow-up inquiries occurred by phone. R was interviewed in the presence of his personal attorney, and his attorney was copied on all subsequent email correspondence between R and me (with the exception of one email R sent on which his attorney was not copied, although I copied his attorney on the response and included R's initial email in that response).

Parties and witnesses were asked about C's allegations, their interactions with R, C's work relationship with R, concerns about potential retaliation (which some witnesses volunteered) and prior complaints or observations about R's conduct with others. At the beginning of each initial interview, and consistent with CSUF's protocol, I provided information about my role, overview of the process, confidentiality and the policy against retaliation. I also confirmed that neither the witness (or in R's case, his attorney) nor I would record the conversations. I took contemporaneous handwritten notes of interviews, and R's attorney took his own handwritten notes during R's interview. At the end of each interview, I read my interview notes to the witness (and in R's case, while his attorney was present) to confirm accuracy of the notes and allow for corrections or additions. All witnesses confirmed that, with few minor modifications or additions (also included in the notes), my notes accurately reflect the content of our discussions. No one has been provided with copies of the notes.

The following individuals were interviewed as indicated:

1. Complainant ("C") (11/12/19 in person; 11/20/19 by phone; 2/19/20 by phone):  
C is the former [REDACTED] for CSUF, a position she held from [REDACTED] until she resigned effective [REDACTED]. Her direct supervisor was W1, the [REDACTED], although C worked closely with and reported to R and [REDACTED]. C provided notes and a timeline she made and a subsequent email about R's alleged behavior. Copies of those documents are marked collectively as Exhibit A. Her formal, written complaint is attached is Exhibit I.
2. Witness 1 (11/12/19 in person): W1 has been the AVP for [REDACTED], [REDACTED] for the last [REDACTED]. She reports to R and supervised C. W1 has been at CSUF for approximately [REDACTED] years, obtained all [REDACTED] there and worked in other positions before [REDACTED] current role when W1's predecessor left

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REDACTED. Before that, W1 oversaw REDACTED, which she continued to supervise after assuming responsibility in her current position for the REDACTED. W1 submitted notes about C's complaints regarding R's alleged behavior (some of which pertain to the other inquiry) and experienced some of the behavior about which C complained. The notes are marked as Exhibit B.

3. Witness 2 (11/13/19 in person): W2 has been at CSUF for REDACTED years. She has always worked in REDACTED as an REDACTED Director. She has been the AVP of REDACTED for approximately REDACTED years, and she reports to R. W2 is the only current AVP R REDACTED. She is aware of and has heard about C's concerns about R's behavior and feels some of his behavior is inappropriate, as well. W2 submitted some handwritten notes she made regarding R's conduct which are marked as Exhibit C.

4. Witness 3 (11/13/19 in person): W3 has been employed at CSUF for approximately REDACTED years, the last REDACTED of which have been in R's office. He provides administrative support to Student Affairs and reports to R at the highest level, but as a practical matter he reports to W5, R's REDACTED Assistant. W3 sits in R's office suite and interacts regularly with C and R. W3 witnesses some of the behavior about which C complained.

5. Witness 4 (11/13/19 in person): W4 has been with CSUF since REDACTED as an AVP, REDACTED. She was hired by and reports to R, supervises 60 staff and more than 200 student workers and interacts with C, as well. W4 has worked in higher education for more than REDACTED years and has heard about C's concerns regarding R's behavior.

6. W5 (11/31/19 in person): W5 has worked at CSUF 14 years, five of which have been in R's office. Before that, she worked for an AVP of REDACTED. She is R's REDACTED Assistant, reports to him and has an office between R and C in R's suite. W5 interacts frequently with C and R.

7. W6 (12/5/19 in person): W6 is the Associate Dean of REDACTED, and this is his REDACTED year at CSUF. REDACTED reports to W2 (an AVP) and also interacts with R regularly. This summer, R said he wanted to make W6 his REDACTED, and the role was approved in REDACTED. The move was not technically a promotion, but it involved both a title change and a salary increase, and W6 would have more responsibilities. The position change was not announced formally, and when REDACTED, C, complained about R, W6 asked that the reassignment be placed on hold. W6 witnessed some of R's behavior toward C and also heard about it from C around the time some of it happened.

8. Witness 7 (12/12/19 via zoom): W7 was R's primary communications person in REDACTED from REDACTED. She did not interact with C at all but was, essentially, C's REDACTED. W7 reported to R for approximately a year after he selected her for that role. Prior to working in REDACTED, W7 worked in REDACTED for several years and with another program while she worked on her degree. She left CSUF to move and work at a university in REDACTED. W7 maintains contact with R, and he is a reference for a university job in REDACTED for which she applied recently. W7 considers R a

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mentor, and R suggested I speak with her. He mentioned the investigation, and she gave him a reference letter (marked as Exhibit D). W7 did not experience inappropriate behavior from R.

9. Witness 8 (12/16/19 in person): W8 has been at CSUF for [REDACTED] years, the first five of which were in an adjunct faculty position. The last three years, she has worked as the [REDACTED] Case Manager (and on [REDACTED]) at the [REDACTED] center in Student Affairs. She reports primarily to the Director of [REDACTED], and W1 is the AVP in charge of W8's division. W8 meets with R at least once a semester, and he sends her emails and texts. They also have interacted on calls with others about the professional development committee. W8 did not experience inappropriate behavior from R herself, but C spoke to W8 regularly and told W8 about some of R's behavior as it occurred (which W8 characterized as inappropriate). W8 also heard from another individual that R touched that individual's sister in a way that made her uncomfortable.

10. Witness 9 (12/16/19 in person): W9 is the AVP of [REDACTED], and she has been at CSUF for [REDACTED] years. She is one of four AVPs who report to R. She has approximately [REDACTED] staff members, and her department helps students with [REDACTED]. R hired her for this job, and she also interacts with C. She experienced, observed and heard about some of R's alleged behavior.

11. W10 (12/16/19 in person): W10 has been at CSUF since [REDACTED], and she is the AVP of [REDACTED] and also serves as the [REDACTED] Administrator. W10 reports to W15, the Vice President of [REDACTED]. She works with R as a designated [REDACTED] person on employee and other [REDACTED] issues for Student Affairs. She also is familiar with C's concerns about R and R's assessment of C's and the AVPs performances.

12. Respondent ("R") (12/16/19 in person, with attorney present): R has been with CSUF approximately five and a half years as the Vice President of Student Affairs. He supervises four divisions (Enrollment/Financial Aid; the Dean of Students' office (activities and services), Health/Wellness and Student Success). Approximately 250-300 full-time employees and students work in about 55 departments for which R is responsible. He has worked in student affairs-related positions for 42 years, has been a faculty member at many higher educational institutions and has won many awards. Endorsement letters and comments R submitted from former and current colleagues about his workplace and other behavior are marked as Exhibits F, F(2), (3) and (4), and a positive news article C wrote and a [REDACTED] (both praising R) are marked collectively as Exhibit E. R also submitted a February 17, 2020 written response regarding allegations and evidence submitted in both this and the workplace investigation. That response is marked as Exhibit F(1). At R's request, I also: (a) reviewed his performance evaluations, which were very positive and did not reference any alleged abusive or other inappropriate workplace behavior; and (b) interviewed additional witnesses he suggested.

13. W11 (1/8/20 in person): W11 has been at CSUF since [REDACTED], and she reports to the [REDACTED] as his [REDACTED]. She interacts with R in weekly cabinet meetings and an additional two to five times per week on average during other meetings and discussions. W11 sees R and C interact occasionally and witnessed a portion of one incident about which C

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complained. W11 had her own concerns about R's other unprofessional behavior toward her (which is the subject of the other inquiry).

14. W12 (1/8/20 in person): W12 has worked at CSUF for [REDACTED] years doing [REDACTED]. He is one of two employees in Student Affairs performing that function and has a dotted line reporting relationship with R. W12 sees R daily because W12's office is [REDACTED] [REDACTED] at which [REDACTED] and students sit. W12 and R also try to meet once every few weeks or once a month, although R is very busy, and that does not always occur. They see each other regularly at CSUF events. W12 also regularly interacts with C. W12 has not seen R engage in any inappropriate behavior toward C or others and is very supportive of R.

15. W13 (1/8/20 in person): W13 has worked at CSUF for [REDACTED] years and is the Director of [REDACTED]. She reports to the Vice President for [REDACTED], has a dotted line report to the [REDACTED], serves on the [REDACTED] cabinet and handles [REDACTED] [REDACTED]s. W13 interacts with R at least once a week in cabinet meetings and works with him on other communications issues. W13 also worked with C when C handled communications for [REDACTED]. She did not witness inappropriate behavior between C and R but provided information regarding the other, parallel inquiry.

16. W14 (1/9/20 in person): W14 is the coordinator for [REDACTED] [REDACTED]s, and she works out of the [REDACTED] Center in the [REDACTED] building. She started working at CSUF in [REDACTED] in 2[REDACTED] and assumed her current position in [REDACTED]. W14 is the [REDACTED] person to hold this position, and she reports to the Director of the [REDACTED], who, in turn, reports to W2. W14 does not really interact with R unless he wants a meeting. She met with him twice this last semester, and she attends his open forums. W14 also is friends with R on Facebook, and she issued the invitation. She aspires to be a vice president of [REDACTED] someday, and R has shared with her information about his path to his current position. According to W14, R could be a mentor about how to pursue her career goals. She attended a [REDACTED] with C for which R gave them tickets, and she saw C and R interact at that event. W14 did not see or hear about R interacting inappropriately with C or see them working together generally.

17. W15 (1/9/20 in person): W15 is the Vice President of [REDACTED] and the [REDACTED], a position she has held for the last [REDACTED] years. She has been at CSUF for [REDACTED], starting as a [REDACTED] and working in many different positions. W15 reports to the [REDACTED], and the [REDACTED] Departments report to her. R is a cabinet colleague, and so W15 sees him at weekly meetings. They also meet one-on-one once a month, and she sees him in meetings once or twice a week. Their operational areas intersect in terms of [REDACTED] and the [REDACTED] (among others). R has not interacted inappropriately with W15, although she became aware of C's concerns and also had information about R's intention to promote C [REDACTED]

18. W16 (1/14/20 via zoom): W16 has worked at CSUF since [REDACTED] [REDACTED] and is the Director of [REDACTED]. She initially was hired as the Director of [REDACTED]

REDACTED, and she reported to W2 in that role. W2's offices were in the suite where R currently is located, and at that time, W16 sat in what is now REDACTED office. R and W5 were in the same offices they occupy now, and student workers sat in the front of the office (as they do now). When working in what is now R's office suite, W16 saw R regularly in the office but did not meet with him individually or discuss her work with him more than once or twice a month. She saw him at director meetings about once a month. W16 is one of the first individuals who learned of C's complaints in late October 2019, and she is aware of other concerns expressed about his behavior. W16's October 30, 2019 and November 4, 2019 notes regarding C's concerns and related topics are marked collectively as Exhibit J.

19. W17 (1/26/20 via Zoom): W17 has been at CSUF for the last REDACTED years (although she previously was employed at the University, left and came back, and so she has more years of service than that). She is the REDACTED Coordinator for REDACTED but she was the interim REDACTED person from REDACTED through REDACTED after which W16 filled that position). W17 currently reports to W2, but she has a dotted line report to R and sits on his leadership teams. She meets with him and others monthly, and she also interacts with him at other meetings or when they are discussing a student situation. She investigated some of R's conduct a few years ago in her prior role.

20. W18 (1/17/20 by phone; 1/21/20 via Zoom): W18 was hired as a college administrator for the CSUF REDACTED in REDACTED, a position he held for REDACTED years. He has several degrees and REDACTED. W18 later was transferred to REDACTED in 2010 as an Administrative Analyst. W18 was on R's search committee and worked for and reported to R from REDACTED to REDACTED in the REDACTED position. He said he previously complained about R's workplace behavior (including alleged inappropriate comments about women) and retaliation and that nothing was done to address the issues.<sup>2</sup> C did not work in Student Affairs when W18 was there, and so W18 did not see R and C interact.

21. W19 (2/5/20 via WhatsApp video): W19 is a REDACTED student at CSUF who will graduate in REDACTED. She was doing an internship in REDACTED when interviewed, but while W19 was on campus during her sophomore and junior years, she interacted with R (and to a more limited extent, C) as a result of her involvement with REDACTED. W19 was REDACTED Vice President of Student Affairs as a REDACTED and she was REDACTED President as a REDACTED. As REDACTED President, W19 had monthly one-on-one meetings with R, and she saw him weekly at events or group meetings. He attended student government meetings occasionally, and she also sometimes interacted with him on search committees. W19 said R did not engage in inappropriate behavior toward her.

22. W20 (2/25/20 via Zoom): W20 has been employed with CSUF since REDACTED. She worked in Academic Affairs for years but joined Student Affairs in REDACTED as the interim Director of the REDACTED. R asked her to do so. W20 applied, interviewed for

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<sup>2</sup> I notified CSUF about W18's concerns but did not investigate them. W18's observations of R's past behavior with and about women were consistent in several respects with other witnesses' more current observations of R's conduct.

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and received the regular appointment about 18 months later (sometime in [REDACTED]) after a competitive, nationwide search occurred. W20 and R have had minimal interactions. She works in the [REDACTED] building, and R works in [REDACTED]. During the past five years, aside from seeing R at large group meetings when 30 to 40 other people were present (which probably occurred about 50 times), W20 has interacted with him only seven or eight times. Two or three of those interactions were in meetings with R alone, and W20 also probably had one phone call with just R when he asked a question about the student union. W20 sees R at the large, monthly director meetings, but they may not interact during those meetings. W20 was not in a position to observe R and C without many others around, and R did not engage in inappropriate behavior that is the subject of this report with W20.

23. W21 (2/26/20 via Zoom): W21 attended CSUF as a student and then worked at the Foundation from [REDACTED], when she became the Director of [REDACTED]. She has worked in that role since the end of [REDACTED], and she reports to W9, the AVP of [REDACTED]. W21's interaction with R is limited as they do not work in the same building. She sees him at monthly director meetings or when he attends events as speaker (which he does approximately twice a month, depending on his travel schedule or other commitments). She also interacts with him occasionally about the [REDACTED] and [REDACTED] initiatives. W21 and R interact an average of at least two to three times a month and sometimes eight to ten times per month. They very rarely meet alone, and usually a coordinator or someone else is with them. R did not engage in inappropriate behavior that is the subject of this report with W21.

24. W22 (2/28/20 by phone): W22 is an outside facilitator and consultant. She has worked on [REDACTED] projects with CSUF's [REDACTED] since [REDACTED]. She did not interact with R much, if at all, on [REDACTED] of those projects. The [REDACTED] and most recent project was related to negative workplace survey feedback CSUF had received regarding Student Affairs. R said he wanted to do a strategic plan to address some of the survey concerns. W22 met with employees (including directors and AVPs) to ask about the work they do and what they need to handle it more effectively and for the division to operate better. The focus of the meetings was not management or the inappropriate behavior that is the subject of this report, and W22 said she would not have expected individuals to express concerns to her about such behavior given her role (and they did not do so). W22 said her exposure to R during that project was very limited, "distant and infrequent."

25. W23 (3/2/20 via Zoom): W23 is the General Manager of [REDACTED], a position she has held since [REDACTED]. W23 worked with R when he hosted the Student Spotlight radio show from April 17, 2016 to March 11, 2018. R usually hosted a student and another guest for half-hour programs that were pre-recorded and aired on Sundays, and so she interacted with him (and sometimes C) during those sessions. Though the show was weekly, shows were pre-recorded because of R's schedule, and so they sometimes recorded two or three shows in a week and then none in other weeks. She interacted with R about twice a month. He did not do anything to make her feel uncomfortable, and she did not see him engage in inappropriate behavior toward C or others.



26. W24 (3/10/20 via Zoom): W24 has worked at CSUF since [REDACTED], and his title is Director, [REDACTED]. He reports to other cabinet members but works with R on [REDACTED] for Student Affairs. W24's office [REDACTED] from R's suite. He interacts with R approximately twice a week through email, and W24, W12 and R also try to meet briefly each week. W24 also sees C and R occasionally at other meetings and events.

27. W25 (3/12/20 via Zoom): W25 worked at CSUF in the [REDACTED] Department in various capacities from [REDACTED] to [REDACTED]. His last position in that department was [REDACTED] Director, and he interacted with R as a peer and co-cabinet member in that role. From [REDACTED] to [REDACTED], W25 changed positions and became R's [REDACTED] for a limited term. [REDACTED], and W25's wife worked in Student Affairs part-time at the [REDACTED] center for about [REDACTED]. During his year as R's [REDACTED], W25 reported to and worked with R primarily on fundraising other projects. His office was not located in R's office suite. Instead, he worked from [REDACTED] downstairs the first three months and in [REDACTED] for the remainder of that year. He was in R's office suite an average of once a day for meetings, to use the kitchen or to talk to W12 (with whom he worked quite a bit) or R. W25 said he did not observe or hear about any inappropriate behavior by R toward C or others.

28. Witness 26 (3/19/20 via Zoom): W26 worked [REDACTED]e as a graduate assistant in [REDACTED] from approximately [REDACTED] until [REDACTED]. W26 knew R before enrolling in the master's program at CSUF and thinks of him as a mentor. His father is the [REDACTED], and so he met R as a result of that relationship. W26 sent R his resume, and R hired him to work on special projects, including a [REDACTED]. [REDACTED] worked more than ninety percent of the time with C, but he occasionally saw R at meetings or events and gave him updates about projects and also saw C and R interact together occasionally. He did not see or hear about R engaging in inappropriate behavior toward C.

#### **IV. Overview of Evidence and Previous Submissions to Parties**

Most documents and emails obtained from C, R, other witnesses and the University regarding this investigation are identified as exhibits in interview Summaries for the witnesses who provided them. Other exhibits provided by the University in response to requests for information are marked as Exhibits J, K and L.

The Summaries of interviews were compiled and made available to the parties for review as noted below. They are organized by date in the order individuals were interviewed. Not every fact obtained is referenced in the Summaries, and information relevant to a related investigation regarding other unprofessional workplace conduct was not included.

The Summaries reflect information provided by witnesses based on their recollections at the time. Quotes included in the Summaries are taken from interview notes that were read to and approved by the witnesses, although the words they recalled may have been paraphrased quotes from others or stated as "words to this effect." Additionally, to the extent witnesses produced emails or other documents that contain dates or details different from those they recalled during the interviews, the Summaries were not changed to match information in the exhibits. Rather,

both the Summaries and the exhibits were provided so that the reviewer(s) could compare the different sources of information.

On February 6, 2020, C and R were notified of their right to review, and were provided access to, an initial cover memo, witness key, Summaries and exhibits. On February 17, 2020, R submitted a written response to the summary of evidence (Exhibit F(1)). On February 25, 2020, and again on March 5, 2020, R asked that additional letters of support received from his former colleagues at CSUF and elsewhere be included in the exhibits and that additional witness interviews occur. C also provided limited additional information.

As a result of R's requests, additional witness interviews took place from February 25, 2020 through March 19, 2020. The Summaries were updated to include additional information received and to identify additional exhibits consistent with R's requests. On March 4, 2020, and again on March 23, 2020, C and R were provided access to updated versions of the cover memo, the witness key, Summaries and additional exhibits. On March 24, 2020, R confirmed by email (on which his attorney was copied) that they had reviewed the evidence and had nothing more to add in this matter. C provided a similar email confirmation on March 27, 2020.

## **V. Independent Review and Evidentiary Standard**

CSUF and its representatives allowed me to exercise discretion in conducting this inquiry as deemed necessary, with no attempt to influence or direct the outcome of the matter.

Information obtained was reviewed and analyzed to determine the merit of C's allegations by applying a "preponderance of the evidence" standard. For purposes of this report, a preponderance of the evidence means the greater weight of the evidence, i.e., that the evidence on one side outweighs, preponderates over, or is more than, the evidence on the other side. (EO 1096, Article VI, Section Z at p.27) This the standard prescribed by EO 1096, and it is a qualitative, not quantitative, standard. The conclusions in this report are drawn from the totality of the evidence, a thorough analysis of the facts, and where necessary, credibility determinations.

## **VI. Relevant Policy Provisions**

C's complaint is governed by EO 1096 in light of her status as an employee when the alleged conduct occurred and as of the date she made her complaint. EO 1096 provides, in pertinent part, that, "All individuals have the right to participate fully in CSU programs and activities free from Discrimination, Harassment, and Retaliation. The CSU prohibits Harassment of any kind, including Sexual Harassment . . . .Such misconduct violates University policy and may also violate state or federal law." (EO 1096, Article I, p. 1)<sup>3</sup>

As C has alleged R engaged in sexually or gender-based harassing behavior, the following policy provisions (sometimes stated in abbreviated form) and definitions (for relevant capitalized terms) are pertinent to this review:

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<sup>3</sup> Some behavior at issue occurred before adoption of the revised EO 1096 in March 2019. The prior version of EO 1096 (rev. October 5, 2016) in effect at the time of the earlier behavior governs the substantive assessment of that conduct but contains the same definitions and standards referenced in this report as those in the current version.

**Article I. Policy Statement**

**A. Prohibited Conduct.** The CSU prohibits: 1. Discrimination, including Harassment, because of any Protected Status: i.e., Age, Disability (physical or mental), Gender (or sex), Gender Identity (including transgender), Gender Expression, Genetic Information, Marital Status, Medical Condition, Nationality, Race or Ethnicity (including color or ancestry), Religion (or Religious Creed), Sexual Orientation, sex stereotype, and Veteran or Military Status. . .; (Id., p. 1)

**Article VI. Definitions**

**R. Gender** means sex, and includes Gender Identity, Gender Expression, and transgender. It also includes sex stereotyping. .. (Id., p. 24)

**T. Harassment** means unwelcome conduct engaged in because of a Complainant's Protected Status and:

- Submission to, or rejection of, the conduct is made a term or condition of the Complainant's employment; *or*
- Submission to or rejection of such conduct by the Complainant is used as the basis or threatened to be used as the basis for employment actions or decision affecting the Complainant; *or*
- The conduct is sufficiently severe or pervasive that its effect, whether or not intended, could be considered by a reasonable person in the shoes of the Complainant, and is in fact considered by the Complainant, as intimidating, hostile or offensive.

Harassment includes, but is not limited to, verbal harassment (e.g., epithets, derogatory comments, or slurs), physical harassment (e.g., assault, impeding or blocking movement, or any physical interference with normal work or movement), and visual forms of harassment (e.g., derogatory posters, cartoons, drawings, symbols, or gestures.). (Id. at pp. 25-26.)

**HH. Sexual Harassment**, a form of Sex Discrimination, is unwelcome verbal, nonverbal or physical conduct of a sexual nature that includes but is not limited to sexual advances, requests for sexual favors, any other conduct of a sexual nature, offering employment benefits or giving preferential treatment in exchange for sexual favors, or indecent exposure, where:

1. Submission to, or rejection of, the conduct by the Complainant is explicitly or implicitly used as the basis for any decision affecting a term or condition of the Complainant's employment, or an employment decision; or
2. The conduct is sufficiently severe, persistent or pervasive that its effect, whether or not intended, could be considered by a reasonable person in the shoes of the Complainant, and is in fact considered by the Complainant, as creating an intimidating, hostile or offensive environment.

Sexual Harassment could include being forced to engage in unwanted sexual contact in exchange for a raise or promotion; being subjected to video exploitation or a campaign of sexually explicit graffiti; or frequently being exposed to unwanted images of a sexual nature in the work environment.

Sexual Harassment also includes acts of verbal, non-verbal or physical aggression, intimidation or hostility based on Gender or sex-stereotyping, even if those acts do not involve conduct of a sexual nature.

This policy covers unwelcome conduct of a sexual nature. While romantic, sexual, intimate, personal or social relationships between members of the University community may begin as consensual, they may evolve into situations that lead to Sexual Harassment or Sexual Misconduct, including Dating or Domestic Violence, or Stalking, subject to this policy.

Claiming that the conduct was not motivated by sexual desire is not a defense to a complaint of harassment based on Gender. (Id. at p. 29)

## VII. Summary of Evidence

Below is a summary of evidence obtained from those interviewed. A more complete overview can be found in the Summaries. Information from C and R is summarized first using a loosely-organized, topical and timeline narrative. Information from other witnesses follows and is organized by reference to categories of alleged inappropriate behavior (such as touching, staring, comments etc.) and other information offered in support of R.

### A. Information from Complainant

C's direct REDACTED was REDACTED, but she also worked closely with REDACTED to R. Her office was REDACTED, and REDACTED of her workload was handling R's REDACTED. She wrote most of his REDACTED. C, REDACTED REDACTED REDACTED; and C sat REDACTED. C's office was REDACTED. All office doors close and have windows etched with a bulldog in the upper half of the door with blinds that can be shut. C characterized the group in the suite as "tight knit." She said she loved her job and colleagues (other than R), and the only reason she resigned is because she could not tolerate R's behavior anymore. She did not feel her job was in jeopardy at the time, and R had been complimentary and had endorsed her for a promotion (as described below).

Although C initially found R to be difficult to work with and a demanding "pain in the ass" who "bullied" people, his inappropriate comments and other behavior became more frequent in her second year of employment. Even before that, however, R did a few things that

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made C feel uncomfortable. For example, in approximately [REDACTED], R returned from a [REDACTED] event, gave her some condoms and said something like, “In case you need these” while laughing about it. C thought it was “super weird” and decided to pretend it had not happened. She said she told her [REDACTED] [REDACTED], about it (and may have told others).

Also in her first year, when C walked by R in the hall or at campus events, he started touching her lower back, near the top of her butt, if he wanted to get around her or when he leaned in close to tell her something. This happened at least weekly when he was on campus throughout the next years, but she did not focus on it as much until other behavior surfaced. She repeatedly said to him, “Please don’t touch me.” When she did so, R laughed and stopped but continued to touch her intermittently. C believes W3, W5 or both saw or heard some of these interactions.

In late 2017, and possibly again in January 2019, R told C while they were in his office that he had hired her because she is pretty and is the face of the office. He did not laugh or seem to be joking. This lead her to believe he did not respect her as a professional.

In August 2018, R made comments to C and others that were inappropriate in connection with a fall opening division event they were planning. They had ordered succulents as a gift, and R said he was not familiar with succulents. R called his wife in front of C (and probably others) to ask if she knew about succulents. After that, R made suggestive comments about succulents. He told C at least five times during event planning discussions not to say the word “succulent” (emphasizing the first syllable and saying SUCK-ulent) or he would end up in the Title IX Office. C said R would “giggle” when the word was used, and she believes some AVPs heard these exchanges.

In December 2018, R gave her a necklace that had a “flash” symbol on it because he called her “the Flash” frequently. It was a running joke because she moved quickly (and she said because she became good at avoiding him if she saw him). They were alone in his office, and it was awkward. She hung it on her monitor but did not wear it.

In early 2019, when C and R met in either of their offices, R told her to shut the door (or did it himself) even if they were not discussing confidential topics. Although that did not bother her initially, he shut the blinds in February or March 2019, and she opened them. He laughed, and it “became a game” after that when they met alone. He would say, “Are you going to open the shade?” She would answer affirmatively, and he would laugh. He did not shut the blinds again after she made a point of opening them, but he continued to shut the door.

On June 21, 2019, C was in the conference room when R touched her in a more objectionable way. She was wearing a black sleeveless blouse and a black bra, and her bra strap had slipped down her shoulder and was showing. R came in to get something, and they chatted for a bit. Then he said, “You’re going to get me in trouble with Title IX” (similar to his comments about succulents), touched her shoulder and adjusted her bra strap without asking. She backed away and said, “Don’t touch me.” He laughed but did not apologize, in keeping with his general reaction when she asked him not to touch her.

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R also made comments about C's appearance. For example, he regularly made observations about her [REDACTED], even though C told him shortly after she was hired that she is uncomfortable when people talk about it. R said things like, "Every time I see you, I forget how [REDACTED] are," and "I'm not used to looking women [REDACTED]." Again, he just laughed when she asked him not to discuss her [REDACTED].

In late March 2019, while they were in the office hallway, R put his hand on her lower back again, commented about a red dress she was wearing (which was loose) and said she should wear it more often.

C also feels that R stares at her chest even when she is not wearing low-cut tops. Other women have mentioned they feel R stares at their chests or body parts. W1 told C to be mindful of what she wears to meetings with R. W1 mentioned she felt R staring at her chest when she wore lower cut tops or at her legs when she wore skirts with slits. Another co-worker in the office across the hall commented that R does not look at women's faces because he is staring at their breasts. R also said right after C resigned that he would like to hire a former CSU communications employee so that he could have another pretty [REDACTED] in the office. He said this outside of W12's office, but C was unsure whether W12 heard it.

In July 2019, R and C were discussing a [REDACTED]. R said, "I won't retaliate against you," and "I'm not the kind of leader who would ever retaliate." C said his comment was completely out of context (though R makes such comments sometimes). They discussed [REDACTED] [REDACTED], but she does not recall discussing that not retaliating is a [REDACTED]. She does not believe that was ever mentioned in the [REDACTED] ([REDACTED]). R said it again at least twice more after that, and C told W1 about it. W1 said C should not try to understand R.

On October 2, 2019, R and C were at a "[REDACTED]" event when R showed C pictures of his sons on his phone. He asked whether C thought they were "hot" and whether she would date them. (One of the sons looks like R). When C told him, "That's really inappropriate," R laughed. C started talking to others, and R then showed her pictures of both boys on the beach in swimsuits and said, "How about this?" She walked away, and R followed her. C doubts anyone else heard or was listening, although she told W5 about it the next day.

Around this time in the fall, W1 told C that W5 had mentioned R seemed enamored with C lately. C told W1 about R showing her pictures of his sons, and W1 acknowledged it was weird and that one of R's sons looks like him. C wondered whether R was hoping she would say his son is "hot" because he looks like R.

In early October 2019, R had another inappropriate interaction with C, this time while they were discussing a [REDACTED] R had supported for C. By way of background, C had applied for an [REDACTED] position in spring [REDACTED]. R was upset when he found out about it. C withdrew when R found out, and he said, "Good" and told her she needed to be more transparent with him. He told her she should not apply for other jobs without telling her supervisor first as a matter of professional etiquette. C had told her direct supervisor, W1, that

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she was applying for the job, and C may have told R that when they were discussing it. R said he would support her for other jobs, but by then, R knew she already had withdrawn her application.

After that, R talked about increasing C's responsibilities and told C he wanted to create a new director-level position for her in Student Affairs. He spoke with her and others about that several times. R encouraged her to apply and had W1 work on a job description for the position. It was exciting, and R said he supported C for the position. There was some discussion about C serving in an interim director role, but sometime in September 2019, C heard (likely from W1) that she would need to apply and compete for the new position. C thought that made sense, and she was confident enough in her skills to know she would be a good candidate during the competitive process. C also said she wanted to be sure if she got the position that she was chosen as the best candidate.

On October 3, 2019, R said he wanted to discuss the promotion, and so they should ride together to [REDACTED] event. C thought they would take R's golf cart (a frequent mode of transportation for them), but R decided to drive them in his car instead. During the approximately four-minute drive, R said it may be hard for C to hear, but he thought she was not qualified for the new director position they had been discussing. He reached over, put his hand on her knee and started moving it up her thigh (she was wearing pants). C said, "Don't touch me" and pulled her legs away. R laughed and said although she was too young and was not ready for a director position, she should still apply even though he did not think she would get it. C said she "shut down" after he touched her, did not speak again during the drive and was surprised and disappointed by his comments. Before this, he had encouraged her to apply. When they arrived, C got out immediately after they parked and walked to the event. R said he had to speak with W1, and he went over to her. C did not hear what the two of them discussed, but she thought it may have been about the promotion as W1 would have input into the selection process. C did not tell W1 about what had occurred until a few weeks later (after she first complained about R's conduct). C felt she could not tell anyone what had happened immediately afterward because it would be her word against R's, and she would not be able to work for him anymore. C thought about leaving her position then, but she loved her job. C felt R had engaged in a "manipulative power move" while they were driving together since R was touching her inappropriately while he told her she was not ready for, and may not get, the director position. C said she later told W1 this was the worst thing R did to her.

Also in early October 2019, there was another uncomfortable incident with R surrounding a [REDACTED] event. C and W12 were talking when R came over with a [REDACTED] in his hand and asked someone to pin it on his lapel. She did not want to touch him and did not respond, and so W12 pinned on the ribbon. C later told W12, "Thanks for taking one for the team." When she told W3 and W5 about it afterward, they told her R had been wearing the ribbon previously and had asked them if it was on the correct side of his jacket. C said she, W3 and W5 all thought this interaction was odd and that R was hoping C would pin on the ribbon.

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R also talked to C about losing weight and working out at the gym. C would not have been concerned about these comments if it were not for his other behavior and comments. For example, in October 2019, she was in his office, and he asked her whether she would work out with him after he saw her twitter post about doing Pilates. R said his wife does not work out. C responded that she did not want to work out with her VP, and he just laughed.

Later that same month, on or around October 23, 2019, R also touched and commented about C's body after they left a meeting with others at [REDACTED]. C was walking ahead with W12, and R called to them to wait while he and W5 were walking together behind them. R and W5 caught up to C in the [REDACTED] parking lot. R grabbed C's left forearm and massaged her upper bicep with his other hand, commenting, "Look at those muscles; she's so toned." C said the touching lasted about 10 to 15 seconds, and she felt she could not get away without making a scene. W5 commented later to C that it was as though time had frozen, and C looked "freaked out." C is not sure whether W12 paid attention to what had happened. (This incident is referred to as the "Arm Grab Incident"). W5 also told C directly during this discussion that R seemed "enamored" with her.

The following day, October 24<sup>th</sup>, R called C into his office, shut the door and was as angry as she had ever seen him. She had been waiting for input from others on the new recreational center policy, but R wanted her to write it herself. R was mad she had not been more assertive about having an AVP and another person write their portions of the policy. He yelled and swore at C. She told him, "I understand" and eventually walked out on him. She told W3 immediately about what had happened and also texted W1 that R had chewed her out. Later that afternoon, C told W1 about R touching her arm at the [REDACTED] parking lot and yelling at her in his office the next day. She left work after that discussion.

W1 and C met about R the following morning, October 25, 2019. W1 asked whether the Arm Grab Incident had made C uncomfortable, and C confirmed it had. W1 said she needed to report the incident, and C told her that interaction was the most recent in a year of harassment. C said she loved her job but felt she had no choice but to leave because she was "done with [R]." W1 encouraged C to stay and asked her to think it over. They discussed possible alternative reporting relationships, and C told W1 she could report the incident to anyone W1 felt was appropriate. At this point, C had not told W1 about the incident during which R touched her leg (although C said she had mentioned to W1 in the past that R had touched her lower back and showed her pictures of his sons in ways that made her uncomfortable). C worked from home the rest of that day.

The next day, Saturday, October 26, 2019, was CSUF [REDACTED] C, her family members and her [REDACTED], had tickets to the game in the [REDACTED]. R was there, but C avoided him. At one point, R came over on her right, put his arm around her and said something to the effect that C was still mad because he had yelled at her on Thursday. C said, "Too soon," and R said, "She's still mad at me." While R still had his arm around her, [REDACTED] came over and put his arm around C on her left side. C felt caught between the two of them. She believes [REDACTED] may have pushed R's hand off her, and it was very uncomfortable. C thought W11,



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who also was in the suite, may have seen the interaction. (This incident is referred to as the “**REDACTED** Incident”).

On Monday, October **REDACTED** 2019, C told W1 she was resigning and submitted a letter stating that she was doing so for personal reasons. That evening, C told R about her resignation during a phone call with R and W1. He was shocked and did not say much, but he sent her a nice note the next day. C learned from W1, however, that R had called W1 after the phone call in which C announced her resignation. R told W1 he had gotten an unspecified complaint about C’s performance. W1 said that she told R, “I was her supervisor, and I never had one complaint.”

At the time she resigned, C thought R felt she was doing a good job and was happy with her work. He had said that previously and had been working on a possible promotion for her. That is why she was so surprised to hear R say she wasn’t qualified for the promotion when they were in the car together. Of course, R was not always happy with everything she did. He yelled at C about the **REDACTED** policy and about a press release W13 sent out that he didn’t like (and he told C to get her [profanity] act together and make W13 fix it). R also told W5 and W1 that he did not like that C was out of the office too much and not available to him enough. W1 said she told R that it was C’s job to be at meetings elsewhere on campus. (C acknowledged R also sometimes said other people were not in the office enough, either). C also heard sometime in the summer 2019 from W1 (not R) that W13 and W13’s boss thought C had dropped the ball on some things. C wasn’t surprised by that because she had missed some meetings with W13 and others because R wanted C in the office or had her doing something else. C knew her relationship with W13 was difficult in part because of R’s demands that C make W13 do certain things, such as fixing the **REDACTED** R did not like. Despite these issues, at the time she decided to resign, C had no concerns about her job or that R was unhappy with her work. She loved her job, and the reason she resigned was because she could not work for R one more day because of his inappropriate behavior. Her decision to resign was unrelated to R criticizing her work or any job security concerns.

On October 29, 2019, in the evening, R sent multiple screen shots to C, W1 and W5 of errors he had found on the website and elsewhere. He had never done something like that before, and C felt he was looking for proof she did not do her job well. She filed a Title IX complaint that night, met with W16, the **REDACTED** Director, about it the following day and worked from a different building and offsite after that.

On November 1, 2019, HR texted C that R had been notified about the complaint. She was afraid of his reaction because she had seen how angry he could get before. Her last day of work was slated to be November 8, 2019, but CSUF put her on paid leave November 4, 2019. R did not attempt to contact C after he was notified about the complaint.

**REDACTED** supported C’s decision to resign, even though she did not want to do that. C said R made her feel “crappy” about herself professionally based on the way he treated her, and it was not good for her self-worth to stay. W10 (from **REDACTED**) and W16 asked C multiple times if she wanted to move to a different position on campus, but C felt it was not safe,

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physically or professionally, to remain on campus with R. Many people have reached out asking her what happened and encouraging her to stay. She feels guilty about complaining because C “knows” R will make others involved in this investigation miserable.

C provided her notes of incidents that occurred with R and a December 20, 2019 email with additional information about interactions with R. (Exhibits A and A(1)). C started keeping notes after R made comments about succulents and Title IX in August 2018. She said she did not have any emails or voicemails reflecting the harassment. C said that those who have seen or heard R’s inappropriate behavior include W1, W3, W5 and W6 (and probably W12). C observed, however, that W12’s office is on the other side of the suite, and she is not sure how much he noticed R’s behavior toward C.

C told W6 and others about the uncomfortable interactions she had with R around the times they happened. She said W2, W4, W9, W4 and W8 (with whom C also discussed some R’s conduct) are aware of R’s inappropriate behavior.

C is not interested in any jobs on campus, regardless of whether R remains at CSUF, because “too much has happened,” and people know about it. She did not report R’s behavior earlier because she was concerned that even if she resigned, R would retaliate against people who witnessed or otherwise knew about the behavior she reported. She had told W1 about some of the issues for the past year, although not the full extent of it. Also, W1 told C well before C told W1 about the extent of R’s behavior that W1 did not trust HR, although she did not say why. W1 has been at CSUF for decades, and so she thought there was a reason W1 felt this way. C is hopeful R will not return to CSUF because of the adverse effect he will have on others, particularly after this investigation.

#### B. Information from Respondent

R has been with CSUF approximately five and a half years as the Vice President of Student Affairs. He said CSUF’s President hired R to be a change agent, and change can be difficult for people. R came to CSUF as “a favor” to the President, who recruited and has known him for years. He and the President discussed that R would work at CSUF for three to four years and would attempt to find a presidency position himself. He was a finalist at another university for a presidency. R’s goal is to help students like himself, and he has won three lifetime achievement and other awards in the last few years. R feels all of these accomplishments have been “tainted” by C’s recent complaint and this investigation.

During R’s first year at CSUF, the President received an anonymous letter that R was drinking and carousing with women. The President told R he knew it was not true, and the matter was not investigated. Three to six months later, the President received another complaint about R, although R does not have all the details about it. The Title IX person at the time and a lawyer from the General Counsel’s office met with him about it, and they had spoken to people about him. Someone alleged they had overheard R say to a woman, “Hey, baby, you’re looking sexy today.” R said everyone knows he does not say those things. R met with an attorney from Atlanta for a good part of the day during that process, and he also heard that someone said he was “elitist” because he spoke at the divisional fall opening about having a great summer

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vacation and being lucky because he went with his wife to Cancun. Again, nothing came of that matter. Since the President's first call to R about the anonymous complaint, when the President calls now without mentioning the topic, R feels like he has "PTSD." He felt that way recently when the President called to tell him he was being placed on leave. R said, "It's hard when people spread lies about you."

R has set up women's and gender (LGBTQ) centers elsewhere, and he set up cross-cultural and gender centers (which report to him) at CSUF. He said he has "a great handle" on what is and is not acceptable work behavior and has attended professional development meetings about such topics. R also has completed online courses regarding harassment prevention and at least one regarding prevention of retaliation.

R recently mentioned to W7, a former female [REDACTED] person who reported to him before C took the role, that there was an investigation about his conduct. He asked her to write a letter on his behalf, which she did. R mentored W7. He also asked a former female [REDACTED] person with whom he worked at SMU to provide a letter. R asked both W7 and this former colleague whether they had ever felt uncomfortable working with him, and they said, "Absolutely not." (See Exhibit D)

R thought he and C had a very positive relationship during the [REDACTED] years they worked together. R hired C's [REDACTED], first, and [REDACTED] said C was being picky about finding a new job because she had a bad experience working elsewhere. At the time, W7 was leaving the [REDACTED] position, and [REDACTED] mentioned C had [REDACTED] experience. R hired C in an [REDACTED] that W7 had left, and C eventually moved to the regular position.

[REDACTED] and C wanted R to mentor them because both want to be [REDACTED] at academic institutions. He had a very positive relationship with both and got [REDACTED] on a NASPA committee. When R was contemplating taking a president's position elsewhere, [REDACTED] was upset R may be leaving. [REDACTED] also asked R to write a [REDACTED] for [REDACTED]. Although R did not have time, he asked C to [REDACTED]. They finished [REDACTED]. R does not recall mentioning to C that he is not the type of leader who retaliates (although he said he is not that type). R and C discussed [REDACTED], but he does not recall discussing whether he is the type to retaliate.

R has spoken to the staff about his relationship with the President, how they met and that the President recruited him to CSUF. R said people have asked whether he has a good relationship with others, and so he told them. R said did not volunteer this information about the President until he was asked. He cannot recall telling anyone that he has a leadership style similar to the President's, and he does not brag about being like the President.

In the context of discussing leadership with employees, R has said, "If you're going to go after leaders (regarding a vote of confidence) and they survive, sometimes they retaliate." He does not remember saying, "If you're going to kill the king, kill the king" or statements like that. He has also told employees a story passed along by a friend at a major corporation about what happens when people don't speak directly to their leaders about concerns. The story was about an individual who was upset with his supervisor and complained to his supervisor's boss about it.

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The supervisor's boss sided with the supervisor, and the employee who complained was working in the janitor's closet the next day. R said he shared this story with his staff to let people know that if they have issues with a leader, it is best to talk to the leader directly and be honest. R denied saying to anyone, "If anyone comes after me, I'll bury them" or anything like that. It never occurred to him that employees may feel that by telling these stories or making these comments, he was trying to signal to them not to complain about him or go over his head. R said he always tells staff to come to him with concerns.

C's work was very good in some areas, and R tried to be positive about what she did well. Since March 2019, C has been distracted. Her work was getting done more slowly, and he told C not to overextend herself because he wanted her focusing on his division's work. He considered this part of his mentoring. For example, C was on the [REDACTED] committee and did not keep him updated. He also made her a co-chair of the [REDACTED] committee (a "big thing"), but the work was moving slowly under her. She was really good with the [REDACTED], although she needed direction. He did not tell C she was not doing well in any area until a week before she decided to resign.

At that point, C was working on a [REDACTED] policy. R told her she needed to work with the Dean and [REDACTED] director on it, and he gave C two or three sample policies to follow. She was not making much progress. R asked C come to his office to discuss it. He does not recall whether the door was open or closed during their meeting. He told her the policy needed to get done and that the Dean and director did not write as well as C. He did not yell at C or raise his voice, but he was firm and not happy. R felt this way about a few of C's projects, and something seemed different with C. Nonetheless, R said he was complimenting C's writing during the meeting. He does not recall how she responded to his comments, other than to say, "Ok." R received something from her soon after the meeting. She did not walk out on him. He has never had a meeting with C at which he yelled at her and she walked out. After this meeting, however, R mentioned to W5 that he thought C was upset with him. It is the only time he can recall that C was mad at him.

It was [REDACTED] the weekend after C and R met about the [REDACTED] policy, and [REDACTED] had asked R if he could get tickets to the [REDACTED] for C and her family. R obtained the tickets from the President and told him [REDACTED] was looking for other jobs, and so he wanted to show [REDACTED] that CSUF valued him. In the suite during the game, R spoke to C's grandparents. Everyone was socializing. He said in a joking way, "I think C is still upset with me." She said, "Too soon" and ignored him. He does not recall putting his arm around C, and he does not have that type of relationship with any of his staff. He only hugs people if they hug him first. R does not recall [REDACTED] putting his arm around C at the same time, and R did not put his arm around C at all. He said they do "kid around" though.

R has touched C only once (and said he does not recall ever shaking hands with her). R and his wife went to dinner with C and [REDACTED]. [REDACTED] hugged R's wife, and so R hugged C. That was the only time he recalls touching C, and it was in a social setting in front of his wife and C's husband. He tries not to have that interaction with staff. R said he never touched C's shoulder, never adjusted her bra strap when it was showing or otherwise and did not recall grabbing her

arm and commenting about or touching her muscles (the Arm Grab Incident). He said these allegations are “ridiculous” because he does not do those things. He has no idea why C would say he did any of that. R agreed that such behavior (or other touching or adjustment of the bra strap about which he was asked) would be inappropriate in the workplace. He said if he knew about that behavior in the workplace, he would have acted upon it as a supervisor.

After denying these allegations, R asked for more context about where alleged touching occurred. He said he keeps a distance in his office when people are there so that he cannot reach out and touch them. R said he has been “super vigilant” about his behavior since the first anonymous allegations against him. He wanted glass put in the office doors so that people could see inside when others were in there with him.

C spoke to R late last summer or early fall 2019 about a possible new position. R had been thinking about getting an [REDACTED] position for the division, and C said that she saw another university had a position combining [REDACTED]. She asked whether R would be open to creating that type of position and said she would be interested in it. He said he would be open to that and asked her to research it. After that, W1, R and HR worked on a job description that would allow C to compete for this new position. He told C he could not give her the position, and she would have to interview for it, although he initially thought about making her an interim director in the role.

Before this, C had applied for another position at CSUF. He was surprised to hear it from someone else but was not angry with C. He did not tell anyone he was upset about it. R told C as a mentoring point that bosses like to hear from their own people first when they apply for other positions. It came up in conversation, and she said she had withdrawn her application for the other job or did not get it. He told her if she applied for another job, he would support her. He has said that to several women at CSUF.

R spoke to W10 this past summer about allowing C to fill an [REDACTED] position so that she could get experience and then apply when it was posted as a regular position. W10 identified potential [REDACTED] issues and gave him a few options. They spoke when he was at or on his way to a conference in [REDACTED]. He wanted to think about the options W10 had presented. When R saw W10 in the [REDACTED] parking lot in late October 2019, he told her the best thing to do was post the regular new position immediately and let C apply. (This was an alternative to having C serve in an interim director position). R also specifically told W1 to finalize the job description for the posting and be sure it allowed C to compete for the job. The idea was that they would post the new position, and if C got the job, they would fill her old position and have her work in the new position. That would help with possible union issues, and R felt there was enough work for two positions anyway.

R thought C had the ability to grow into the new director-level position. Through her studies and work experience, she had “the basics.” He would not have encouraged her to apply for the job otherwise. He never told C if she applied, she probably would not get the job. He said he told her quite the opposite. R also observed it would not make sense for him to tell his

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AVP (W1) to be sure the job description contained qualifications C could satisfy if he did not think C was qualified or would not get the job.

R met with C to let her know about the reasons for the posting (vs. giving her an interim position) and the various issues. C said she understood and would apply for the job. That is why R was very surprised when she resigned.

At some point this past fall, R and C were on their way somewhere (possibly to a [REDACTED] ceremony), and they discussed the promotion and related issues. R said they may have driven his golf cart or taken his car. He explained to C that she would have the opportunity to compete for the promotion. He did not put his hand on her knee or thigh, and R said he does not touch women inappropriately. R did not tell C she was not qualified for the position or that he would mentor her for it. She was definitely in the running for the job, and it was his hope she would get it (even if he could not guarantee it). R said he never touched C inappropriately, and she never told him not to touch her (because he never did).

R also had discussions about a promotion for [REDACTED] earlier in the year because he had applied for different jobs and wanted to advance. R spoke to W2, [REDACTED] AVP, about wanting to keep him because he did a good job. R asked W2 what they could do to keep [REDACTED] and he also spoke to the President about it. The President said that in the past, people had been made special assistants to Vice Presidents. R eventually decided to make [REDACTED] a [REDACTED] to the Dean and to him. [REDACTED] received a five to eight percent raise. Although [REDACTED] wanted to be an AVP, R did not think he was ready for that. He does not recall telling anyone that he wanted to keep [REDACTED] because he did not want C to leave. R wanted to keep both [REDACTED] C. He also spoke to W10 about [REDACTED] possible promotion.

At some point around August 2019, R discussed with C that [REDACTED] was interviewing for jobs elsewhere. He asked whether C would leave if [REDACTED] left CSUF because he did not want to make her an interim director if she was going to leave right away. C said she would be at CSUF for at least a year.

Recently, C said she had bought [REDACTED] concert tickets, and asked whether he had better tickets (and if so, whether she could have them). She said she was going with W14 and a graduate assistant. He told C she could have his wife's ticket because his wife would be out of town, but it was next to his seat. C took the ticket, and W14 and C sat and took a selfie with him.

R's office door window has blinds, but he always keeps them open unless he is changing clothing or his wife is with him in his office. He "never, not once" drew the blinds in his or C's office when he was with C. She never asked him to keep the blinds open (since he did not draw them). He said C's allegation is "bizarre." After the first anonymous complaint about him, R leaves the blinds open in his office. W5's office is near his, and the only window in R's office that faces the interior of the suite is the partial window on his door.

R probably has shut the door in his office when meeting with C. After the first anonymous complaint about him, R shuts the doors only with people he trusts. Sometimes he

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met with C or with C, W5 or W3 behind closed doors if they discussed confidential matters. C never asked him to keep the door open or to open it after it was shut.

R also has never commented about C's personal appearance. He did not say anything about her red dress and did not know she had one. R did not say he hired her only because she is pretty. He hires people because they are competent and not because they are pretty. R did not comment about C's [REDACTED] or call C [REDACTED]" R probably kidded her about being "Flash" (a superhero cartoon character) because she moves so fast. He gave C a "Flash" insignia that was a charm on a kids' necklace. He also bought C, W3 and W5 smiley balls from an event. He occasionally gives the staff small gifts. They have said he is nice and has a good sense of humor.

C played sports, and C and R discussed basketball. She mentioned she did not like people talking about her [REDACTED], and so he did not discuss it after that. R does not recall saying he is not used to looking [REDACTED] but she is so [REDACTED] (or a comment to that effect). R and C went to basketball games together sometimes and discussed C playing [REDACTED]

C and [REDACTED] also went to [REDACTED] gala and sat at R's table (R gets only 10 seats). (R emailed a picture of that, although it did not print well enough to include in the exhibits). R thought C and [REDACTED] were his friends, which is why he is so surprised by these allegations.

R denied that: (a) he stared at C's or any other woman's chest areas or blouses or tried to look down their tops; (b) stared at any woman's legs, whether they wore a slit skirt or otherwise; (c) gave C or any other employee packets of condoms (though the health center has them) or commented about calling the health center "the sex center" or anything like that. He said he helped make the health center the best facility possible, and he would never disparage it that way.

When asked whether he told stories about events at which women took off clothes or were nude or stories that otherwise had a sexual connotation, R said he probably told some stories to employees in the context of talking about weird things that happen at colleges. For example, R attended a Halloween party at a different school, and a woman showed up with a stuffed snake wrapped around her breasts and private parts. She looked naked. It was a work party, and so her costume was inappropriate. At the time, he asked a colleague to tell the woman that. R also probably mentioned to staff that at a game in Buffalo he attended with his sons, three women got up and took off their clothes. He likely told the stories in social settings. Sometimes the staff ask him what the weirdest thing is that happened in his career, and he may have told the stories in that context. R said people like to hear those stories.

R also may have mentioned to employees that he had a prior boss who is a lesbian, and he often was called in to calm her down. He did not say he was a good-looking, athletic guy but she was not interested in him or anything like that. R could have mentioned it when discussing positive/negative leadership qualities because that former boss had a temper, threw things and yelled and screamed. He does not recall mentioning she was a lesbian, although she was open about it. R said he might have mentioned it in the context of saying his boss had trouble working with men.

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R probably showed C pictures of his sons, but they were not in swimsuits in the pictures, and he did not ask whether she thought they were hot or whether she would date them. He said, "Why would I? She's married." R does not recall whether he or others mentioned that his son looks like him.

He also has not asked C to work out with him, and he never commented his wife does not work out. C never said she did not want to work out with him because he never asked. R said, "These comments aren't truthful."

At an opening event in fall 2018, people received succulents as gifts, and he did not know what they were. C, W3 and W5 joked about his lack of knowledge, and he called his wife and asked her for information about succulents. They were there when he did it. R does not recall saying, "SUCK-ulent" (with that type of emphasis) or asking people not to say the word or he would get in trouble with the Title IX Office.

There was a [REDACTED] event at which R may have worn a ribbon on his jacket. He does not recall asking people if the ribbon was pinned correctly or taking it off and going to C and W12 to ask someone to pin it on him. R said this could have happened, but he does not recall. He attended a breakfast for the [REDACTED] observance and an event at which women won awards for women's issues.

R learned about C's resignation on October [REDACTED], 2019, after a meeting he had with W1, C and W8 about the [REDACTED] committee. He attended by phone. After the first part of the meeting, W8 left, and C resigned and gave two weeks' notice. He was shocked and surprised because they had been working on a promotion for her, and he had put her in charge of the [REDACTED] committee. Nonetheless, he did not want to push her about the reasons for the resignation. He asked whether he could do anything to make her change her mind, and he wished her the best. He did not act mad and made positive comments in the email he sent to her. (See Exhibit F (October 29, 2019 email)) He was disappointed but not upset. R enjoyed working with C and thought they had a positive, great relationship and enjoyed each other's company.

The only person in the office with whom he spoke about C's resignation was W5. He said he did not understand why C was leaving. R asked W5 (in her office, with the door shut) whether she knew of anything going on that led to the resignation. He also spoke to W12 about projects W12 and C were working on.

R was not in the office much after C resigned and does not recall criticizing her performance after she told him about the resignation. He pointed out some mistakes in the webpage, but he does not know whether he sent them to just C or C, W1 and W5. C was curt in some of her responses to him, and so "You could tell something was going on." He asked C to do only two or three things before he was placed on leave.

R did not do anything to speed up [REDACTED] promotion after C resigned. He had decided before C resigned to have [REDACTED] continue reporting to W2 rather than reporting to him.



After C resigned, R saw a former employee at an event who might be interested in doing communications work. She was with her husband, who said the woman would “love” working with R. The woman also said she would love to work with R but asked what had happened to C. R told her C was resigning. He never commented to anyone about this woman’s appearance or that she is a pretty, **REDACTED**.

At the end of the discussion and afterward, R provided me with the names of many individuals at CSUF and elsewhere that he asked me to interview regarding his interactions with women and the work environment he creates. He volunteered to take a polygraph because he said none of the sexual incidents about which he was asked had occurred, and he had no idea why C would say he did these things. R said “a million women” would say he does not engage in inappropriate conduct.

R stated that he is very hurt C would “lie” about him when he has gone the extra mile for her and **REDACTED**. He understands that leadership styles are different, and not everyone likes his, but he has never touched anyone inappropriately. R said this is like the rest of society now, as he is being accused of doing something that did not happen. It is happening to him and maybe some others because the things he was questioned about never happened. R also asked that I review his performance evaluations.<sup>4</sup>

After our meeting, R sent a number of emails and documents regarding his reputation, background, work accomplishments, endorsements from female colleagues (at least one of which has experience with survivors of harassment and sexual violence) regarding the professionalism of his interactions with him, emails supporting C and **REDACTED**, pictures of C and R and other documents he believes reflect positively on his character, leadership style and support of female colleagues. Documents he provided (and that could be printed in readable fashion) relating to C’s allegations in this investigation are included as Exhibits F, F(2)-(4), G(1).

Additionally, after reviewing the first evidence submission, R provided a written statement with additional information in response to allegations that he behaved inappropriately toward C and others. The statement reflects his view that, among other things, C resigned and invented these allegations because he criticized her work, and that W1, W2 and W18 lied about him because he changed their duties or provided negative feedback about their performance. Much of the other information in the written statement provides more details about some of the statements made during his interview. R’s supplemental submission is marked as Exhibit F(1).

### C. Information from Other Witnesses

Several individuals witnessed or heard about R’s behavior that C reported, and in a few instances, experienced some of the behavior themselves. Other witnesses, however, did not experience or observe R engaging in any of this type of behavior toward them or others.

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<sup>4</sup> I later did so, but as the reviews do not address, mention or otherwise establish whether R engaged in the behavior C contends occurred in violation of EO 1096, and in consideration of R’s privacy, the reviews are not marked as exhibits in this matter. They were very positive reviews that did not mention or admonish R for any inappropriate workplace behavior of any kind, in violation of EO 1096 or otherwise.

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Summaries of the information provided regarding categories of R's behavior follows, although more details can be found in the Summaries.

1. Alleged Unwanted Touching: No one but C complained that R touched them in a way that made them uncomfortable. Although most touching incidents C reported happened when R and C were alone, others were present for the Arm Grab Incident and the **REDACTED** Incident. W5 saw R massage C's bicep in the **REDACTED** parking lot on the way back from a meeting at **REDACTED** and her recollection was consistent with C's report of what had occurred. (C, W5) Although W12 was around at the time, however, he did not see or hear the incident. (W12) C also told her husband and a friend and colleague, W8, about the Arm Grab Incident around the time it occurred (**REDACTED**, W8), and she consistently reported this to W1 a few days later (W1). Similarly, W3 said he overheard C and W5 discussing R's behavior during that incident after it happened.

With respect to the **REDACTED** Incident, **REDACTED** account of what occurred (and how he responded) was generally consistent with C's statement, and W11 also saw R put his arm around C in the **REDACTED** at the **REDACTED** game. W11 said she wouldn't have thought much of it, but she had heard about C's concerns with R's behavior by then, and so she noticed it. C told W1, W4, W5 and W10 about this incident, and W2 heard about it from W6 (who reports to W2). W15 was in the **REDACTED** during this incident but was not close to R and C and did not see him touch her (or see **REDACTED** put his arm around C).

With respect to other incidents of touching C reported (touching her lower back, adjusting her bra strap, touching her knee/thigh in the car while discussing a possible promotion), others overheard some of these interactions or heard about them around the time they happened or within a few weeks after they occurred (with respect to some of the final incidents). For example, W3 and W5 overheard C asking R not to touch her (although they did not see the touching). C told W1 and W4 recently that R repeatedly touched her lower back despite requests that he not do so (W1, W4), and she told **REDACTED** that R touched her arms and shoulders and put his arm around her for no reason. **REDACTED** W5 heard from C that R adjusted her bra strap and put his hand on her thigh (during the promotion discussion in the car) within a few days after each incident occurred. W1, W4, W6, W8, W10 and W16 also heard consistent information from C or others about some or all of such incidents. Additionally, W1 saw C shortly after the drive to the **REDACTED** during which R allegedly put his hand on C's knee/thigh and said C seemed upset. C did not tell her what had happened, however, until they met a few weeks later to discuss C's complaints about R's behavior. C told W4 about R saying she was not qualified for a promotion around the time that happened (although not the knee/thigh touch itself) and said C commented she was "done" with R. W24 also saw R put his arm around C at least twice and said she seemed uncomfortable and commented about that.

Additionally, W8 recalled another colleague saying that when she and her sister went to a fundraiser with R, R put his arm around the sister and rested his hand near the top of her butt. This behavior was consistent with the way C said R touched her.

Other witnesses did not experience, observe or hear about this type of behavior from R. (W7, W12, W14, W19-23, W25, W26).

2. Alleged Staring: Although no one else saw R staring at C's chest or other body parts, W1 and W9 said they experienced similar behavior from R. For example, W1 said R is substantially taller than she is, and he sometimes looked down her blouse or stared at her chest. In October 2019, she also saw him staring at her leg during a meeting with others. W1 was wearing a professional dress that had a slit on the side, and she saw him staring at her leg where the slit was. She felt self-conscious enough to put her hand over the slit. (W2 also heard about this). W9 said that R stares at her chest to the point she pulls up her tops, contemplated dressing differently at work and mentioned it to her husband (who said she dresses appropriately for work). Similarly, some witnesses heard from an employee who works across the hall from R's suite that she believes R stares at her breasts. (W2, W5) W8 also heard from C that R engaged in this behavior.

W18 also recalled that: (a) a female student worker complained in 2015 that R stared at her chest, and it made her uncomfortable enough that she asked to be moved to a different department; and (b) a now-former employee told W18 R was "chasing" around players at a women's basketball banquet a few years ago. He heard about these things a few years ago and submitted emails regarding the student's complaint. (W18, Exhibit H) W17 also heard about and followed up on a student's concern to this effect, but the woman declined to file a formal complaint. W16 was similarly aware that a female student in August 2016 was initially willing to make a complaint about R's alleged harassing behavior, though she was not aware of what happened with the complaint.

Other witnesses who worked with R and C at various times did not experience or hear that R engaged in this behavior (though W3 was aware of other inappropriate behavior). (W3, W12, W14, W19- 26)

3. Alleged Comments about C's Appearance (or other Women's Appearances): In addition to R's comments about C's toned arms during the Arm Grab Incident (which W5 heard, W3 heard C and W5 discussing and W8 heard about from C), W3 and W5 heard R comment about C's [REDACTED]. W5, in particular, heard R refer to C as "[REDACTED]" and both W3 and W5 thought C mentioned to R that she is sensitive about her [REDACTED] (which R acknowledged, as noted above). Although W12 did not hear R mention C's [REDACTED] W12 was aware of C's sensitivity about it. W1, W6 and W8 also heard from C that she was uncomfortable with R's comments about her [REDACTED].

W6 and W8 also heard from C that R said he hired her because she is pretty, and his comment made her feel like he did not appreciate her skill set.

W1, W6 and W10 heard from C that R told her she should wear her red dress more often, and [REDACTED] said that C started wearing looser clothing as a result of R's comments about her appearance. R also commented about W15's clothing, but W15 did not find that offensive, sometimes complimented R's clothing choices and said R notices women's clothing because he buys it for his wife. (W15)

W18 did not have information about R's behavior toward C, but he recalled that R made comments about other women's appearances when R and W18 worked together. For example, when they were at a Jamba Juice behind a very pregnant woman, R commented, "Have you ever seen a woman with such a small butt and waist and such a big belly?" When he had W18 drive him around campus, R also commented, "Did you see that short skirt?" or "Did you see those heels" when he saw attractive young women.

Similarly, W17 recalled an anonymous 2016 complaint that R told a female employee, "Your husband thinks that's sexy" and referred to high heels as "hooker shoes."

Others did not hear or hear about these types of comments from R (W7, W12-14, W19-26))

4. Alleged Meetings with C Behind Closed Doors and Trying to Shut Blinds: W5 confirmed that R occasionally met with C behind closed doors (and with the blinds shut at least once), and she heard from C that he tried to close the door and blinds as "a game". W3 also recalled hearing the blinds being drawn when C met with R in the office at least once (which he thought was odd), and he also heard from W5 that R did this with C. W1, W2, W6, W8 and W10 heard from C or others that this behavior occurred. W18 recalled that before windows were installed in office doors in R's suite, R used to meet with women behind closed doors frequently.

In contrast, a number of people said that R "never" shut the blinds when meeting with them and shut the door occasionally, if at all, usually when discussing confidential information. (W9, W11, W12, W13, W15, W19-21, W24-26). In W15's case, R did so only after asking whether she wanted the door open or closed. (W15) She, R and others noted that R had windows installed in his office door and others to help prevent accusations of inappropriate conduct after the University received an anonymous complaint about his behavior. (R, W5, W15). W16 said she and R frequently met behind closed doors because of the confidential nature of their discussions.

Other witnesses did not report meeting with R in his office alone with him or have information about this allegation. (W14, W23)

5. Alleged REDACTED Ribbon Pinning Incident: W3 and W5 were present for portions of this incident. They confirmed R asked both of them the appropriate lapel on which to pin the ribbon, and W5 saw him wearing the ribbon before walking out toward C and W12. W3 saw R approach C and W12 for help pinning on the ribbon and confirmed W12 eventually did so. C, W3 and W5 discussed this afterward, and all three felt R did this because he wanted C to pin the ribbon on his jacket. (C, W3, W5) W12 had no recollection of this, although he said it's possible he pinned the ribbon on R's jacket or that C said, "Thanks for taking one for the team." C also reported this incident consistently to W1 and W6, and W2 heard about this from W5.

Other witnesses did not have information about this allegation (other than to the extent C shared it with W1, W10 and W16 during the complaint process).

6. Alleged Other Inappropriate Comments To, and Conduct Toward, C: W4 and W9 also heard R make sexually suggestive comments about “SUCK-ulents” (although not necessarily accompanied by references to getting in trouble with the Title IX Office), and C told W6 and W8 about the comments. Similarly, C told W5 that she was offended R gave her condoms (W5), and W6 heard about and shared with W2 that this had occurred. (W2, W5, W6, W9 (heard this from others)). (Exhibit A) C also told W1 and W6 that R had asked C to work out with him. (W1, W6, W11 (heard from W1)).

The day R allegedly showed C pictures of his sons and asked whether she thought they were “hot,” C told W3, W5 and W6 about it. W5 said C looked “flustered” and “pretty upset” when C told W5 described to her what had happened. W1 and W8 also heard this from C. (W1, W3, W4 (heard later), W5, W6, W8)

W3 and W5 also said that R frequently wanted C to do work others could have done for him and often asked where C was when she was out of the office. Both felt toward the end of her employment that R was “enamored” with C and tried to insert some distance between R and C to protect C. W5 also shared these thoughts with W1. (W1, W3, W5) W6 also felt R had a bit of a “crush” on C.

Other witnesses did not have information about these allegations.

7. R’s Alleged Inappropriate Stories and Other Conduct with Other Witnesses: Several individuals also heard R tell one or more stories about women at work or in work-related social settings that they felt were inappropriate or odd. For example, R told one story about a woman at a Halloween party elsewhere who was naked or scantily clothed, and another about a woman or women “flashing” him or taking off clothing at athletic events. (W2, W3, W4, W5, W9 (heard from another AVP that R told the latter story)) He told another story about having a former lesbian boss who wasn’t attracted to him despite his good looks and athletic build, but noted he was someone who could calm her down. (W4, W9)

W9 heard R mention attending a Pitbull concert at which a woman was “gyrating her hips,” that he went to Mardi Gras and saw women taking off their tops, and that he has a crush on Sofia Vergara. W8 heard from an AVP that R told her he is attracted to Latinex women, and so his wife won’t allow him to watch Modern Family. R commented to W4 that when he was younger and working at another institution, the “moms” there were hitting on him. (W4)

W2 recalled that R said something to the effect that they could refer to the health center as “the sex shop” because it was distributing condoms. She felt that was inappropriate and included it in notes she kept about R’s behavior. (Exhibit C).

W24 said that when R golfed with him and a few other male colleagues, R made comments or told jokes with sexist or sexual overtones (though W25, one of the golfers W24 said was present, did not recall hearing any such comments then or at other times from R).

Other witnesses did not report hearing R make or hearing about any of these or other inappropriate comments. (W7, W10 (though aware of C's concerns), W12, W13, W14, W19, W20-W23, W25, W26)

8. Other Information Regarding C's and [REDACTED] and Related Interaction with R: R said, and a number of witnesses heard from both R and C that R wanted to promote C to a director-level position, and he felt she was qualified for the position. (W1, W3, W5, W6, W8, W10, W15) W1, W10 and W15 confirmed that R initially wanted C to be placed in the position in an interim capacity so that she could get experience (which may give her an advantage in the eventual competitive process), and he told them to be sure the job description for the new role did not disqualify C. He also obtained approval from the President for [REDACTED] to receive a [REDACTED] the same time as he was contemplating a promotion for C. (R, W2, W4, W6, W9, W10, W15) W5 and W10 heard from R before and after C resigned that he did not want to lose C or [REDACTED]. Shortly after the alleged knee/thigh touching encounter in the car, when R arrived at the [REDACTED], he immediately spoke to W1 about getting the new position posted and double-checking the job description to be sure C would be competitive for the position. (W1)

Additionally, after C resigned, W3, W5 and W10 recalled that R wanted to finalize [REDACTED]. W1 and W5 also said R was very upset C had resigned and suddenly was critical of her work. Before that, R had told many witnesses he was happy with C's work, and she had received positive performance evaluations (which W1 gave, but R was aware of). (W1, W3, W4, W5, W6, W9, W10, W15)

The only other witness in R's suite, W12, did not discuss any promotions for [REDACTED] or C with R (and other witnesses interviewed also were not involved with or aware of the promotions)

9. Information re Concerns About Possible Retaliation by R: Several witnesses reported concerns that R may retaliate if people complained about his behavior. A few heard him make the comment, "If you're going to kill the king, kill the king" (or words to that effect) and tell the story R admitted telling about the person who ended up working in the janitor's closet after complaining about his boss to the boss's supervisor. (W2, W4, W5 (heard from others R said such things), W9) W2 heard R say he would "bury" anyone who came after him.

Several also frequently heard R mention or discuss his close relationship with the President and some felt he did so as a control mechanism, possibly to deter them from challenging or complaining about him. (W1, W2, W3, W4, W5, W9) A few also expressed concerns about working with R if he found out they had provided information adverse to him in this matter. (W1, W2, W3, W5, W9, C (on behalf of others who remained))

Other witnesses who worked in R's suite at various times, such as W12, W24, W25 and W26, did not have information regarding this allegation or hear such stories.

10. Information Regarding R's Professional Workplace Behavior: As noted above, R submitted letters from a number of former male and female colleagues from CSUF and other universities (and in some instances, professional organizations) praising him and confirming

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their positive work experiences with him. W7, an attractive, younger woman who submitted one of the letters and worked with R closely as CSUF as C's predecessor, said R was always professional and appropriate with and mentored her. (Exhibit D) She volunteered, however, that she would not discount anyone else's experiences.

R also pointed out that C wrote a [REDACTED] about him (which also contained a quote from [REDACTED] about him) and that [REDACTED] wrote a recommendation letter for R to receive an award. (Exhibit E) [REDACTED] said he had little choice but to do so when R asked him, and C wrote [REDACTED]s as part of her job. ([REDACTED], C)

Several men who worked around R (W12, W24, W25, W26) said they did not see, experience or hear about R acting inappropriately in any way, with any women, including C. W12, in particular, said he did not see the Arm Grab Incident (though C and W5 said he was nearby) and did not remember the [REDACTED] ribbon-pinning incident (though C, W3 and W5 did and said he pinned on the ribbon, and W12 admitted it could have happened). W12 found R "delightful" to work with.

A number of women, such as W8, W10, W11, W13, W14, W15, W16, W17, W19-W23, also said R did not engage in any touching, staring or other suggestive behavior (such as inappropriate comments) with them. Some of them were aware of C's concerns and anonymous and other complaints regarding R's behavior, however, because of their HR-and related roles, or discussions they had with C (or W6, in W2's case) as friends or colleagues. (W2, W4, W8, W10, W11, W15, W16, W17)

Several men and women who have worked with R in recent years also said they did not hear comments or stories from R regarding the negative consequences when someone complains about the boss or other remarks that suggested R may retaliate against those who complained about him. (W8, W11, W12, W13, W24, W25, W26) A few of those individuals over whom R has no current power or control, however, are aware of others' fears or said they could understand why others who report to him may fear retaliation for complaining given their other experiences with him. (W11, W15, W17)

### **VIII. Witness Credibility**

In many respects, C and the witnesses who corroborated a number of her allegations were more credible than R. Although R repeatedly denied ever touching, staring or engaging in other unprofessional conduct with C or others, several people either witnessed, heard about or experienced the behavior, and their observations were consistent with what C reported. For example, R said he never touched C other than once hugging her at a social event in front of her husband, and he specifically denied the Arm Grab Incident and [REDACTED] Incident. W5 was present during the Arm Grab Incident, W3 overheard W5 and C discussing it shortly after it happened, and others heard about it consistently from C around the time it happened or when she first complained. (W1, W6, W8, W10) Similarly, [REDACTED] was present during the [REDACTED] Incident, and W11 saw R put his arm around C during that incident (though she did not see all of it). W24 also saw R put his arm around C a few times, and she said things that indicated R's actions made her uncomfortable. Similarly, W3 and W5 heard C tell R not to touch her (another

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comment he denied C made), and they also viewed his behavior with the [REDACTED] ribbon pinning as a ploy to get close to C. C also told W5, W6 and others about the bra strap adjustment and other incidents around the time they occurred, and W8 heard from a colleague that R touched her sister's lower back in the way C said R touched her lower back. Other women said they felt R staring at their bodies (W1, W9), and a few individuals heard R tell stories or make comments that were suggestive. R also denied making the "SUCK-ulent" comments, although C and others heard him do so. (C, W4, W9) The consistency of this and other corroborating evidence regarding other alleged behavior stood in stark contrast to R's blanket denials that any of these incidents occurred.

Similarly, the information provided from several witnesses about R's more recent behavior appears to be consistent with information about R's conduct in years past. For example, at least one student previously complained that R stared at her breasts, and there were some anonymous complaints and comments to the effect that R had engaged in inappropriate behavior toward women. (W16, W17, W18) The concerns raised resulted in R undergoing specific training about how to behave appropriately in the workplace (and, at R's suggestion, that windows be installed in the doors in his suite).<sup>5</sup> (R, W11, W15, W16, Exhibit K) Although those who complained were not identified or interviewed (which reduced the weight given to such information), and some complaints pre-dated C's employment, this information was consistent with C's current allegations and further reduced the credibility of R's statements that he has not engaged in such conduct with C or others.

This is the case notwithstanding R's more recent contention that C, certain AVPs and W18 had ulterior motives to lie about his conduct. During his interview, R denied bad-mouthing the AVPs, was generally positive about C's and the AVPs' performances and talents (noting he hired most of the AVPs) and said, among other things, that he supported C and [REDACTED] for a promotion (which several others corroborated). His comments indicated these individuals had little, if any, motivation to lie about him because, as R stated, he supported all of them (and in particular, C and [REDACTED]). In fact, that is one reason R said he was so puzzled that C lied when alleging that he touched her and told her she wasn't qualified for and wouldn't get the promotion. After reviewing the Summaries and learning specifically which of the witnesses said negative things about him, however, R changed that narrative. His written response suggests C, W18 and some AVPs (W1 and W2) are lying about his behavior because he changed their job duties or orally criticized their job performance (although he acknowledged he did not do so in their performance evaluations), thus implying they are upset or want to get rid of him because their jobs are in danger (or in W1's case, that she wants his job). The response also appears to attack both W1 in terms of her personal behavior as a "gossip" and disclosures about an alleged affair she had, and C in terms of allegedly favoring female graduate students over male graduate

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<sup>5</sup> The Student Affairs Workplace Quality surveys and the 2016 Micro Climate Assessment (and an anonymous complaint of which the President's [REDACTED] and others were aware) also mentioned concerns about abusive or unprofessional behavior in Student Affairs, including references to "hostile work environment" (albeit not naming R directly) and sexist and other inappropriate comments. (W11, W17, Exhibits G, L)



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students (topics which appear to be largely irrelevant to the point R was making or this investigation). (Exhibit F(1))

A number of witnesses, however, confirmed R's initial statements that R liked C and praised her work (at least until she resigned, when that changed) and gave all his AVPs, C and W5 (who also provided information adverse to R) very positive performance evaluations (or in C's and W5's case, feedback) for the past several years. (W1, W3, W5, W6, W10, W15) W10, one of R's HR contacts, also did not recall R discussing performance issues about any of the AVPs or about C with her (though it is undisputed W18 and R were at odds, and W18 was on a performance improvement plan).<sup>6</sup> Indeed, R hired or promoted all but one of the AVPs (who thus arguably had reason to be loyal to him), he wanted to promote C and [REDACTED] to jobs with more responsibilities and pay (and had just obtained approval for a raise and [REDACTED] for [REDACTED]). (C, R, W1, W2, W4, W5, W6, W8, W9, W10, ) C credibly maintained--as did R and others--that her job was not in jeopardy. (C, R, W1, W6, W10, W15) R also has not attacked W5's and [REDACTED] performance or credibility directly, although they were among those who witnessed or heard about the behavior about which C complained. Moreover, some of the individuals who provided information that did not reflect well on R's behavior are cabinet members and others over whom he has no power, and R did not offer any purported motivation for them to manufacture evidence against him. In short, by most reports (including R's, initially), those who currently work with and report to R, and provided adverse information about him, felt secure in their jobs (or at least they did until they were interviewed in this matter) and were not unduly concerned about R's alleged performance criticism (if any). Thus, some of R's observations about why these adverse witnesses may have lied about him is contrary to much of the evidence he and others offered and further undermines his own credibility.<sup>7</sup>

Indeed, R's approach in this regard tends to suggest that those who work most closely with R were not paranoid when expressing fear that R would retaliate against them for truthfully corroborating his inappropriate behavior (which is why they said they did not act sooner). Many were concerned about how R would react if they provided negative information about him. Their fear is based on, among other things, the facts that: (a) R told them stories and made negative comments about the adverse consequences of complaining about one's boss (and in one instance, about him, specifically (W2); (b) he touted his close relationship with the President; (c) he reacted negatively when people criticized even his listening and communication skills (much

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<sup>6</sup> W18 was the only witness who came forward voluntarily, and it was apparent he does not like R and feels he should be discharged for conduct about which W18 complained previously. He produced emails in past years to others, however, regarding his prior report in 2015 that a female student felt R had acted inappropriately toward her and had engaged in other inappropriate conduct. (Exhibit H).

<sup>7</sup> C acknowledged that R yelled at her a few times about things she felt were beyond her control, but she never felt her job was in jeopardy (particularly given R's efforts to promote her). She did not quit to avoid being fired or to concoct a retaliation claim because she was about to lose her job. Rather, she complained because she no longer would be there, although she still worried about the consequences for her colleagues. Nor can R effectively argue she quit because she wasn't getting the promotion, since R said he never told her she wasn't qualified for and wouldn't get it. Similarly, it was undisputed that R had obtained approval of an appointment of [REDACTED] as his [REDACTED] [REDACTED] right before C resigned, and he, too, provided information that was adverse to R. Again, there is little apparent motive for C or [REDACTED] to have fabricated these allegations based on alleged concerns about job security or criticism.

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less questioned the propriety of his behavior with women); and (d) he mentioned, and people knew, that his conduct was investigated previously, and from their standpoint, he suffered no adverse consequences (a perception that further bolstered their assessment he is insulated from complaints). For example, W17 observed that when she was required to investigate R's conduct in her prior Title IX position, he tried (unsuccessfully) to have her removed from certain committees. (See Section C, 9, above) With one exception (W18), none of the witnesses volunteered to speak with me, and a few stated their concerns directly about the consequences they or others would suffer for speaking against him when he returns to the office after this investigation. Although R consistently denied making some (but not all) of the comments attributed to him about the adverse consequences of complaining, several people consistently recounted that he did. Moreover, if he hadn't, and if he was as consistently nice to, and supportive toward, them (as he said he was), there would be little reason for them to fear retaliation. Based on the information received, these individuals did not appear motivated to fabricate lies that R engaged in inappropriate behavior. They did not appear to be overly sensitive about his behavior, and there was no evidence that they had conspired to concoct all of these stories just to get rid of him. To the contrary, the witnesses who offered some of the most damaging evidence about R's behavior believe they have everything to lose and nothing to gain by having done so. There is no guarantee they can "kill the king" by supporting C, and they seemed keenly aware of that.

Putting aside R's contention C fabricated these allegations because he unduly criticized her performance (which, as noted above and with a few exceptions, does not appear to be the case until after she left), it is difficult to identify an obvious motive for her to have done so. If, as R contends, he was supportive of, never touched or crossed the line with C, mentored and wanted to promote her and [REDACTED], and acted professionally at all times with C because they had a "great working relationship," then C had no apparent reason not to want to work with him. She credibly asserted (and [REDACTED] and others confirmed) that although R was a "pain in the ass" and could be difficult to work with for leadership reasons, she loved and was good at the work, got along well with her immediate colleagues and told them repeatedly that R was making her uncomfortable. C acknowledged that W13 and W13's supervisor were not happy with some of her work, but she didn't report to them, and R apparently defended her (per W13). And again, R had promoted C's [REDACTED] and was working to promote her. C also expressed genuine concern that she couldn't remain if she complained about R and that others who corroborated her allegations also would suffer adverse consequences. The preponderance of evidence to date does not support the conclusion that C invented these allegations for some nefarious, self-serving reasons, either on her own or in conjunction with [REDACTED] [REDACTED].<sup>8</sup> In contrast, R had several

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<sup>8</sup> [REDACTED] also was credible in terms of the information he provided and his own measured assessment of R's behavior. He acknowledged that his own work experience with R was primarily and frequently positive but credibly confirmed he is aware and C and other women did not always have that same experience. He also candidly explained that this situation is difficult for him because he got along with R, but he also supports his wife and agrees she and others have not been treated as well as he has. R had supported and obtained a special appointment for [REDACTED] by the time C complained, and [REDACTED] [REDACTED] in light of this matter. He nonetheless supported C's decision to speak up and confirmed she had shared several of the incidents reported as they were occurring. Again, given

more significant motives, including preserving his position at CSUF, his professional reputation (of which he is understandably proud) and his potential to secure a presidency elsewhere, to be less than truthful during this process than C or the other witnesses did.

## **IX. Fact Findings**

The preponderance of evidence supports the following findings of fact regarding R's alleged inappropriate behavior. Except in a few instances noted below, R denied that he engaged in any of the alleged conduct toward C or other women. As a result, the findings do not repeat in each section his denials of the allegations but instead reference those instances in which R admitted the alleged behavior (but for which he gave a context or explanation different from others' interpretations or recollections of the conduct, as noted in the Section VII, above). The findings with respect to each category of alleged behavior and specific incidents are stated below. The analysis of whether such behavior violated EO 1096 follows in Section X, below.

A. R Touched C in Ways that Made Her Uncomfortable: C credibly stated, and in certain instances others corroborated, that R: (1) grabbed her arm and massaged her bicep in the REDACTED parking lot while commenting about her muscles (i.e., the Arm Grab Incident); (2) touched her knee/thigh during a drive to a REDACTED event in R's car, during which R said she wasn't qualified for and probably wouldn't get the promotion; (3) tucked C's bra strap back into her sleeveless blouse, and in doing so, touched her shoulder without her consent; (4) touched her lower back near her upper buttocks; and (5) put his arm around her in the REDACTED at REDACTED (i.e., the REDACTED Incident) and otherwise. C noted all of these incidents occurred after she had asked R not to touch her (which W3 and W5 overheard). Several of these more significant interactions (the thigh/knee touching, the Arm Grab Incident and REDACTED Incident) occurred within the last few weeks or days before C resigned.

Although R denied he engaged in any such behavior and touched C only once at a social event where C's REDACTED present, there were witnesses to some of these incidents. For example, W5 saw the Arm Grab Incident in the REDACTED parking lot. W3 also overheard W5 and C talking about it around the time it happened. W12 had walked with C to the parking lot before this occurred but did not see this interaction. According to others, he may have walked ahead when R stopped C and did this. Similarly, REDACTED was present during the REDACTED Incident (and put his arm around C to pull her away), and W11 saw and corroborated part of C's recollection about what occurred, including the touching R denied. C also consistently reported some of these incidents to W1, W4, W5, and W8, and again to W10 and W16 and during the complaint process. She also made notes of some incidents as they occurred. (See Exhibits A, B, I, J) R said none of these things happened, but others were there for some of the interactions and said they did.

Additionally, although other types of touching occurred when only R and C were present, a few witnesses provided corroborating information that included the following: (a) W5 and W6

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REDACTED positive relationship with R and his planned career trajectory, REDACTED had no apparent professional incentives to invent or support false accusations against R. The mere fact he REDACTED C is not a sufficient reason to discount or ignore the otherwise credible information he provided given the totality of the circumstances.

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said C told them about the bra strap incident and W5 recalled hearing from C that R had touched C's knee/thigh, both shortly after C said these things happened; (b) W1 said that C's report of the incidents to her was generally consistent with (although not identical to) the details C shared during her interview; (c) W1 also saw C when she arrived at the [REDACTED] event after the knee/thigh-touching incident in R's car, and W1 noticed C seemed upset (but C did not explain why at the time); (d) W24 saw R put his arm around C a few times and said she did not seem comfortable with that behavior; (e) W3 and W5 heard C tell R not to touch her; (f) W8 heard from a colleague that R had put his arm around that colleague's sister at a CSUF event and rested his hand near the top of her sister's butt (similar to the behavior C reported); and (g) C, W3 and W5 consistently described what may have been R's deliberate attempt to persuade C to get close to him and pin on his lapel ribbon for the [REDACTED]. Even though C declined to volunteer and did not touch R because W12 pinned on the ribbon instead, the incident was odd enough that C, W3 and W5 all believed (and discussed at the time) that R manipulated the situation to get C to pin on the ribbon that morning. C and others also told W2 and W6 about it (and C later told W1 around the time she resigned). In light of this and other information, the preponderance of evidence received to date thus supports C's allegations of unwanted touching and is contrary to R's denials that he ever touched C at all (other than one hug at a social event in front of C's [REDACTED]).

It is worth noting that some of R's conduct when viewed in isolation, such as an occasional arm around a colleague's shoulder or a hand on someone's back, may not rise to the level of offensive conduct depending on the context. Other more intimate touching, however, such as tucking in C's bra strap or putting a hand on her knee and thigh, is not appropriate in the workplace. More importantly, as noted above, C specifically told R more than once she did not like or want to be touched (which R also denied but at least two others heard). Under such circumstances, R had notice of and should have respected C's boundaries.

**B. R Likely Stared at C and Made Inappropriate Comments About C:** Although R denied this behavior with C or any other women, several witnesses saw or heard about this behavior. For example, C and two other women reported R staring at their breasts (and in W1's case, at her legs). (C, W1, W9) In some instances, they shared this information with others. (W1, W5, W8) Other witnesses heard similar observations from another female colleague and/or a student worker who initially complained but declined to proceed with a formal process. (W2, W5, W17, W18)

Similarly, C and others credibly stated that R made comments about C's appearance that made her uncomfortable (and according to C [REDACTED], prompted her to wear different clothing). For example, R commented about C's [REDACTED] several times even after she told him such comments made her uncomfortable. (W1, W3, W5 (recalling R called C "[REDACTED]"), W6, W8) R acknowledged he was aware of this sensitivity. He also remarked enthusiastically that she should wear a red dress more often and said that he hired her because she is pretty. (C, W6, W8) As noted previously, R also commented about C's muscles during the Arm Grab Incident (C, W5 and W3 (overheard discussion about the incident shortly after) and asked C whether she would work out with him. Although there were no witnesses to R's comments about C's red dress,

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working out together or hiring her because she is pretty, C told others about the comments before she complained (W6, W8) and afterward around the time she resigned. (W1, W10, W16) She also kept notes of some of them. (Exhibit A)

Additionally, W18 said that R made comments to him about women, including remarks about women's short skirts or high heels and a pregnant woman with a small behind and waist and a big belly. (W18) W17 also heard that R told a female employee, "Your husband thinks that's sexy" and referred to a woman's shoes as "hooker shoes." Such remarks were not made to C but were contrary to R's denials that he does not make such inappropriate comments about or too women regarding their appearances.

Some witnesses also said R made occasional suggestive comments and told stories at work or at work-related social events about women engaging in sexually provocative behavior and responding positively to him because of his good looks. For example, when Student Affairs ordered succulents as a division event gift, C and a few others heard R laugh and refer to them as "SUCK-ulents"(W4, W9), and C said R remarked he would get in trouble with Title IX if they didn't stop discussing them (though others did not hear the Title IX remark). When R returned from the health center one day, R gave C some condoms in case "she needed them," and C told W5 and W6 about it at the time. W6 also told W2 this later. W2 also recalled (and made a note at the time) that R said they could start calling the health center the "sex shop." (Exhibit C) A few witnesses also heard R tell a story or stories (some heard more than one) about a woman removing her clothing at an athletic event, another scantily clad woman attending a work Halloween party, a woman at the Pitbull concert with "gyrating" hips or students' moms "hitting on him" when he was younger at another school. (W2, W3, W4, W5) R told W4 and W9 about his prior female, lesbian boss who didn't like men or him despite his good looks. (W4, W9) W24 recalled that R made jokes with sexist or sexual overtones during an all-male golf outing (although R and W25, who golfed with them, denied this). R acknowledged telling some (but not all) of the stories about women but said people invited him to do so by asking about unusual things that had happened to him working on campuses and they "wanted" to hear the stories. Those who reported the stories did not agree and said R volunteered them. They felt the remarks were inappropriate in work-related situations. (W2, W3, W4, W5, W9) Although C heard some, but not all of these comments, the comments R made, and stories he told, to others were consistent with C's allegation that he made inappropriate remarks. Such evidence lessened the credibility of R's denial that he does not engage in this type of behavior. The preponderance of the evidence reflects that R told these stories and made such comments (some to C, and some to others) without being invited to do so, and such exchanges were not well-received.

C. R Engaged in Other Conduct That Made C Uncomfortable: C identified several other aspects of R's behavior that made her uncomfortable: (1) showing C pictures of his sons (in swimsuits and otherwise) and asking whether they are "hot" and she would date them; (2) making a "game" of closing the door and blinds when R met with C; (3) giving C a necklace; and (4) wanting C around him and asking where she was when out of the office doing work. The evidence also supports a finding that R more likely than not engaged in this behavior.

First, W5 heard from C about R showing her pictures of his sons the day it happened (as did W6). C seemed “flustered” and “pretty upset” about it. (W5) W3, W4 and W8 also heard about it from others around the time this happened, and C shared consistent information with W1 when she complained about R’s behavior to her.

Second, W5 observed R closing the blinds and doors when meeting with C, and W3 heard about this from W5 and also heard the blinds being drawn once when C was in R’s office. C also told W6 and W8 about this behavior around the time it occurred and told W10 when she shared her concerns about R’s behavior in late October 2019. This behavior occurred despite R’s insistence he never engaged in this conduct with C and had windows installed in all the doors in the office—including his—after he was anonymously accused of inappropriate behavior (an action others confirmed he took for this reason). (W3, W5, W16 (re reason for installing windows, W2 (heard this occurred from others)). Other women and men said that R never drew the blinds when speaking with them and closed the doors only occasionally when discussing confidential information (and sometimes asked permission before doing so with them (W15)). R’s behavior toward C in this regard, which was corroborated, appeared to be somewhat unusual compared to the way he treated other women (and in some instances, men).

Third, C and R both confirmed that he gave her a necklace with a “flash” superhero charm on it. R explained that he gave his staff “smiley” balls and other things for morale, and because C was always moving quickly, he saw the inexpensive charm as something along the same lines. W8 also heard this from C around the time it happened, and C said she thought the gift was odd.

Finally, W3 and W5 (and to some extent, W1) said that R frequently asked where C was if she was out of the office (attending meetings or other work) and wanted her to handle his requests when others could do so. W5 opined (and shared with W1 even before C complained) that R was “enamored” with C in the months before she resigned. W5 and W3 also felt in the last few weeks they needed to help C maintain distance from R. W4 heard some of these observations from W5. Moreover, the information C and others provided about R’s reaction to her application for a job outside the division (W1, W5), R’s efforts to **REDACTED** and C to keep **REDACTED** (W1, W5, W6, W10, W15), and his negative reaction to her resignation (C, W1, W5) also suggest that R’s conduct may have been prompted by more than just appreciation for **REDACTED** C’s skill sets.

Again, there may be nothing objectively inappropriate about R asking others where C was if she was out of the office, giving her an inexpensive necklace and asking her to handle particular tasks (because, as he acknowledged, she is good at her job) when such acts are viewed in isolation. As discussed in Section X below, however, the totality of the conduct and circumstances in which R engaged in this and other, more objective inappropriate conduct, reasonably prompted C and others to conclude that R’s behavior was grounded in a particular personal affinity for C that genuinely made her uncomfortable.

D. Other Observations. The above findings are sustainable even though a number of witnesses did not experience, observe or see the behavior C reported. R asked that additional

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witnesses be interviewed, and he submitted many endorsement letters from women and men with whom he has worked previously at CSUF and elsewhere. Such evidence was considered but was insufficient to outweigh the other information received.

In most instances, these witnesses were much less likely to be in a position to have experienced or observed the behavior about which C complained given their limited interactions with R, C or R and C together, particularly if they worked in other offices or buildings. (W11, W13, W14, W20, W21, W23) Although W12, W25 and W26 worked in the same offices with C and R, W25 and W26 did so for only a limited time period earlier in C's employment, before much of the alleged conduct occurred. W12's office has been in R's suite for some time, it is around the corner from R's and C's offices, but he said he often is out of it for business (and admitted he does not pay much attention to "drama"--an interesting observation--and denied seeing anything inappropriate when others said he was present for some of the interactions).

In other instances, the witnesses' ages, positions or gender may have made them less likely targets of R's behavior or less likely confidants for C. For example, it is not surprising that R did not engage in this type of inappropriate behavior with men (W12, W25), with female Cabinet members who are his peers (W11, W13, W15), the HR Director (W10) and others over whom he had no power or who reported to other supervisors who could act as buffers between R and them. (W19, W20, W21, W22, W23) Granted, C's predecessor, W7, is an attractive young female who said R mentored and treated her well. (Exhibit D) The fact R didn't engage in inappropriate behavior with her, all or even the vast majority of women with whom he has worked, however, does not preclude a finding that he did so with C. As noted above, that assessment is qualitative, and not purely quantitative. Indeed, it is not unusual that someone engaging in inappropriate behavior singles out only certain individuals based on preferences, power disparities and a variety of other personality traits and factors.

Additionally, some of the more troubling conduct about which C complained, like the bra strap incident and the knee/thigh touching incident, took place when R was alone with C, and so other witnesses could not have seen it. Inappropriate encounters often occur one-on-one (which by definition lessens the likelihood of detection). R was well aware that his behavior had been the topic of other complaints and could be subject to further scrutiny. Although he explained that is precisely why he does not engage in any questionable behavior, alternative inferences reasonably can be drawn about why some of this conduct occurred in private.

It also was not surprising C did not broadcast her concerns about R's behavior to female cabinet members like W11 and W13, male colleagues (such as W25, a [REDACTED] and R's [REDACTED] that R suggested be interviewed) or W26 (the [REDACTED] a graduate student and another of R's chosen witnesses), the [REDACTED] (W19) or others interviewed who did not work with C or R as much. (W20, W21, W22, W23) In fact, it would be unusual for C to reach out to such people given the nature of their respective positions and her very limited contact with many of them. C also said she was concerned (particularly after the knee/thigh touch incident) that people would not believe her if she complained because R wields such power and had made odd comments about not retaliating (which she felt implied he had that in mind). She was similarly nervous about contacting anyone in HR because her

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supervisor, W1, had told her she didn't trust HR to protect employees. Instead, C did what she felt was logical and safe, which was to vent about R's behavior with [REDACTED] the colleagues to whom she is closest or spends the most time (W3 and W5, and occasionally W4 and W8), and sometimes her supervisor (W1). Those (and others) credibly supported her allegations. (See Section VIII re Witness Credibility)

In summary, that many witnesses interviewed (and all those who submitted endorsement letters on R's behalf) were unaware of R's behavior toward C, and said they were not on the receiving end of such behavior themselves, does not reasonably support an inference, much less a finding, that R's behavior toward C did not occur. For these and other reasons, the evidence received to date supports the conclusion that R engaged in the alleged inappropriate conduct.

## **X. Analysis and Finding of Policy Violation**

For purposes of EO 1096, prohibited harassment includes (but is not limited to) unwelcome verbal, nonverbal or physical conduct of a sexual nature (or harassment based on a protected status, such as gender) where such conduct is sufficiently severe, persistent or pervasive that its effect "whether or not intended, could be considered by a reasonable person in the shoes of the Complainant, and is in fact considered by the Complainant, as creating an intimidating, hostile or offensive environment." (EO 1096, pp. 25, 26 and 29 [emphasis added]). The policy thus includes subjective and objective components to evaluate the alleged behavior, and it is not a defense to a complaint of harassment based on gender that the conduct was not intended to offend or was not motivated by sexual desire.

The totality of the behavior about which C complained likely violated EO 1096 because it was sufficiently persistent and offensive to the point C felt compelled to resign to get away from it. As C stated in her final email to me, she could not "work one more day for [R]" and could not be in "an environment any longer with the level of disrespect, uncomfortable touching and comments about [her] body and appearance, and sexual harassment that [she] endured."

The preponderance of evidence reflects that R's objectionable behavior toward C was persistent because it occurred on a number of occasions, primarily during her last two years of employment.<sup>9</sup> As noted above, C and several witnesses offered multiple examples of R's inappropriate conduct that occurred intermittently in 2018 and 2019 (and a few in 2017). R's behavior ranged in magnitude from generalized comments to unwanted touching and included: (1) occasional comments about C's clothing, muscles and [REDACTED], and a request that she work out with him (C, W1, W3, W5, W6, W8, W10, W16); (2) saying he hired her because she is pretty and giving her condoms (C, W1, W2, W5, W6, W8); (3) staring at her (and other women's) body parts (C, W1, W2, W5, W9); (4) attempting to draw the blinds and shut the door when meeting with her after being asked not to do so (C, W1, W3, W5); (5) making suggestive "SUCK-u-lent" comments that he said may get him in trouble with Title IX and asking her whether his sons are "hot" and she would date them (C, W1, W4, W5, W6, W8, W9, W10, W16); and (6) occasionally touching C's lower back above her buttocks, touching her knee/thigh on one

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<sup>9</sup> The Oxford Dictionary defines persistent behavior as "continuing to exist or endure over a prolonged period."



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occasion (while discussing a promotion), putting his arm around her occasionally (in addition to the REDACTED Incident), grabbing and massaging her bicep (the Arm Grab Incident) and tucking her bra strap into her shirt, even after being asked repeatedly not to touch her. (C, W1, W3, W5, W6, W8, W10, W16, W24); see also Exhibits A, B, I, J) Some conduct occurred in 2017 and 2018, but it became more frequent in the summer and fall 2019. Additionally, the more significant touching (the Arm Grab Incident and knee/thigh touch) occurred in the last few weeks before C resigned, and the REDACTED Incident occurred just a few days before. Given the circumstances, it was reasonable for C to feel that R's behavior was unwelcome, inappropriate and persistent (and probably would not change) since it had progressed over a few years from occasional, uncomfortable comments and touching to more frequent behavior, and more importantly, touching in a more intimate and suggestive way.

Other witnesses voiced similar views about the impropriety of R's conduct toward C. (W1, W3, W5, W6, W8) Many of those who observed or heard about it vouched for C's genuine discomfort with R's behavior, particularly since C had made her boundaries clear in terms of not wanting to be touched and not wanting to discuss her appearance. (W1, W3, W5, W6, W8, W12 (aware of REDACTED sensitivity, as was R)) W3 said he sometimes "cringed" when he heard R's comments toward C because everyone in the office (including R) knew how uncomfortable C was about such comments. W3 and W5 also heard C tell R not to touch her. Additionally, some witnesses felt R's conduct was tinged with gender-based or sexual overtones because of the content of some comments ("SUCK-ulent" references, comments about C's appearance and body or the Arm Grab Incident) and his apparent personal affinity for C (and some other attractive women, as W1, W5 and W18 observed). (W1, W3, W5, W8 (told C some of R's behavior created a Title IX issue, and she should talk to someone about it)) For example, R frequently asked for C, wanted her to do work others could handle and tried to be around her (as was the case with the REDACTED ribbon pinning incident) more as time went on. (C, W1, W3, W5) When C applied for a different job in spring 2019, R was unhappy (C, W1, W5), and he was working on promotions for both C and W6 so he would not lose either of them. (C, R, W1, W2, W5, W6, W10, W15) Indeed, R's behavior with C became prevalent enough that by the fall of 2019, W3 and W5 were discussing ways to protect C from R's "enamored" behavior. (W1, W3, W5) Moreover, after C resigned, W1 and W5 said R was upset about it and started to criticize her work. These and other facts led C's colleagues to echo C's conclusion that R's behavior with her was ongoing and inappropriate, particularly given R's position as her boss and a member of the President's cabinet. It therefore does not appear that C was hyper-sensitive or unreasonable in her perception that R's behavior was offensive.

Admittedly, some of R's conduct about which C complained was not objectively inappropriate or sexual when viewed in isolation (though other behavior was). For example, occasionally shutting the door to discuss confidential matters, putting an arm around a colleague occasionally or commenting about an employee's REDACTED would not rise to the level of EO 1096 violations in and of themselves (though R denied engaging in even this potentially neutral behavior, which several others observed). The totality of the circumstances and evidence obtained, however, provide additional context for the finding that even some seemingly innocuous acts contributed to C's discomfort working with R. For example, as noted above, C

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and others said that she told R she did not like to be touched and that they and R were aware C was sensitive about and did not want to discuss her [REDACTED] (W1, W3, W5, W6, W12 (re [REDACTED], R (knew C was sensitive about her [REDACTED]). Nonetheless, R made such comments and touched her anyway. He also made comments with gender-based references, such as not being used to “[REDACTED]” (referencing C’s [REDACTED]. (C) Similarly, C said (and W3 and W5 to some extent corroborated) that she asked R to leave the blinds and door open when she was with him, and he made “a game” of trying to shut them. When he showed her pictures of his sons and made the comment about her dating them, she pointed out the impropriety of the comments (and told others about it). (W1, W5, W6, W8, W10, Exhibits A, I, J) In short, C drew reasonable boundaries on several occasions that R easily could have respected, and on several occasions, R crossed them anyway (and sometimes laughed about it (C)). Such facts, when considered in conjunction with R’s more inappropriate touching and other behavior, provide important context to understand C’s discomfort with R. His individual acts did not occur in a vacuum but were part of a larger pattern of objectifying and disrespectful behavior that C (and others) genuinely found to be offensive.

It is also worth noting that R and others acknowledged he was aware of concerns about the propriety of his behavior even before C began working for him. According to R, he was the subject of anonymous complaints about his behavior (including with women), with the first occurring in his initial year at CSUF. He and others were aware of later complaints (and in one instance, a female student complaint in 2015 that W18 reported but the student declined to pursue, although R said he was not aware of that). (R, W11, W16, W17, W18) R also received special training about appropriate workplace behavior in late 2016. (Exhibit K) In fact, R said he had windows installed in the doors in his suite to avoid allegations of inappropriate conduct with women, and that with these “unfounded” complaints in mind, he generally does not meet with women behind closed doors. He also acknowledged that the type of touching and comments C alleged he made (but denied) would be so inappropriate that if he saw others engaging in such conduct, he would be compelled as a manager to report it. That, he argued, is why he didn’t engage in such conduct. Nonetheless, C and several other women and men credibly said he did so even if, as R says, he knew better. In light of R’s awareness that his behavior with women had been the subject of past scrutiny, his definitive assertion he knows what is and isn’t appropriate workplace behavior, and the particular power he wields in his position (and arguably as the President’s friend and colleague), one would expect he would take extra care to avoid even the appearance of impropriety.

In summary, regardless of whether R simply ignored, forgot or intentionally violated the reasonable and easily sustainable boundaries C set, whether he thought his actions were taken in jest, or whether he lacks a fundamental awareness or understanding of how his actions as a senior manager are perceived by others, the result is the same.<sup>10</sup> The totality of his behavior over a period of two or more years, when coupled with its increasing frequency in the months

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<sup>10</sup> R’s comment to the effect he is being falsely accused like “others in society” reflects not only his belief that he (and not C) is the real victim in this matter, but a lack of self-awareness and understanding of the implications of his own behavior which several witnesses—and not just C—felt was inappropriate.

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preceding C's resignation, the sexual overtones of his comments and some of the touching, and the significant power disparity between R and C, created an environment that C genuinely and reasonably felt was so offensive that she had to leave a job she (and others) said she loved. The preponderance of evidence thus supports a finding that R's inappropriate behavior violated both the spirit and the letter of EO 1096.<sup>11</sup>

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<sup>11</sup> As noted above, this finding is not a determination that R engaged in unlawful sexual harassment. A trier of fact could reach an alternate conclusion based on the information provided, the applicable standards for such a claim and different credibility assessments.